TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 86.

JAMES C. COREY, PLAINTIFF IN ERROR,

vs.

THE MAYOR AND CITY COUNCIL OF BALTIMORE ET AL.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

FILED JULY 13, 1904.

(19,011.)

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SUPREME COURT OF THE UNITED STATES.

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a *Record.*

In the Court of Appeals of Maryland.

JAMES C. CORRY
vs.
MAYOR AND CITY COUNCIL OF BALTIMORE and Others. } No. —.

Appeal from the circuit court No. 2 of Baltimore city.

Wm. P. Maulsby, Jr., Wm. S. Bryan, Jr., for appellant.
Wm. Pinkney Whyte, Olin Bryan, Isidor Rayner, Charles S. Rich, for appellees.

Filed September 16th, 1902.

b STATE OF MARYLAND, *set:*

Court of Appeals of Maryland, January Term, 1903.

At a court of appeals for the State of Maryland, begun and held for the said State at the city of Annapolis, on the second Monday of January, being the twelfth day of said month, in the year of our Lord one thousand nine hundred and three, and of the Independence of the United States of America, the one hundred and twenty-seventh—Chief Judge McSherry, Judges Page, Pearce, Fowler, Boyd, Jones, Briscoe, Schmucker—among other were the following proceedings to wit:

1 Transcript of record from the circuit court No. 2 of Baltimore city to the court of appeals of Maryland in the case of James C. Corry *vs.* The Mayor and City Council of Baltimore *et al.*

William P. Maulsby, Esqr., William S. Bryan, Jr., Esqr., appellant's solicitors.
Olin Bryan, Esqr., Isidor Rayner, Esqr., Charles S. Rich, Esqr., appellee's solicitor-.

2 *Bill of Complaint.*

Filed 20th September, 1900.

Circuit Court No. 2 of Baltimore City.

JAMES C. CORRY, Plaintiff,
vs.
THE MAYOR AND CITY COUNCIL OF BALTIMORE, JAMES P. GORTER, Collector; Murray Vandiver, Treasurer of the State of Maryland, and The New York and Baltimore Transportation Line, a Body Corporate, Defendants.

To the honorable the judge of said court:

Humbly complaining, your orator James C. Corry, a citizen and resident of the State of Pennsylvania, and a non-resident of the State

of Maryland, suing in behalf of all other non-resident stockholders in the said New York and Baltimore Transportation Line, who may come in and contribute to the expense of this suit, as well as in his own behalf, respectively shows unto your honor:

I. That he is a resident and a citizen of the State of Pennsylvania, and a non-resident of the State of Maryland; that he is a stockholder of the New York and Baltimore Transportation Line, a body politic and corporate, holding 150 shares of the capital stock of said company of the par value of $20. per share.

II. That said New York and Baltimore Transportation Line is a body politic and corporate of the State of Maryland, incorporated by the acts of the General Assembly of Maryland of 1847, chapter 112, which said charter was supplemented by the act of 1866 of the General Assembly of Maryland, chapter 106, and the said charter was extended by the act of 1876 of the General Assembly of Maryland, chapter 36.

III. That by the provisions of section 131 of article 81 of the Code of Public General Laws of Maryland, it is declared that the stock of steamboat and other corporations held by non-resident stockholders is situate at the place where its principal office for the transaction of business is, which in the case of the said New York and Baltimore Transportation Line is the city of Baltimore. The other provisions of the statutes of Maryland in relation to the taxation
3 of stock of corporations are contained in sections 2, 4, 141 and 144 of the said 81st article of said Code of Public General Laws, and the said statutes provide for the valuation of the shares of stock of all corporations by the tax commissioners of Maryland, and that against all the shareholders of said stock shall be charged the State tax, and against the shareholders of said stock resident in Maryland shall be charged the municipal or county taxes of the several localities and jurisdictions in which the respective resident shareholders reside; and that against the non-resident shareholder shall be charged the municipal taxes of the home office of the said corporation; that in the case of non-resident shareholders in the New York and Baltimore Transportation Line such municipal taxes are those levied and assessed in the city of Baltimore. That all of said taxes, State, county, and municipal, are by the said statutes of Maryland required to be paid to the city collector of Baltimore, and to the treasurer of Maryland by the said corporation, and are authorized to be charged to the account of the said shareholders respectively.

IV. That the said tax laws of the State of Maryland have been before the court of appeals of said State on divers occasions, and that the same have been construed to impose the tax upon the owner of the shares of stock respectively and individually for and on account of the shares of stock owned by him; that the tax is imposed, not upon the said steamboat company, nor upon its capital stock, nor upon the property of said company in Maryland, nor upon the shares of stock so by said section 131 of article 81 of said Code of Public General Laws of Maryland declared to have its or their situs in Mary-

land, but that the same is imposed as a personal obligation upon the person of the owner of said shares of stock, and that the same are to be paid by said steamboat company for said owners, who are liable for said money so paid for and on their personal account in the same manner as for any other obligation whatever; and that the decisions which define and declare that the statutes of Maryland which levy and access the taxes against the respective owners of stock and not against the stock itself or against the corporation, are the cases of The United States Electric Power and Light Company *vs.* State, 79 Maryland Reports, 63, and Crown Cork and Seal Company *vs.* State, 87 Maryland Reports, 687, and Hull *vs.* Improvement Company, 89 Maryland, and Monticello Distilling Company, *vs.* Mayor and City Council of Baltimore January term 1900. That 12,811 shares of said stock are held by non-residents of the State of Maryland, and that the total amount of the tax levied on the said non-resident stockholders for the year 1899 amounts to $3,695.79 and to a slightly smaller sum for the year 1900.

V. That the capital of the said New York and Baltimore Transportation Line was valued and assessed after making all de-
4 ductions for real estate on which the tax was paid by the corporation at $14.57 per share for the year 1899, and at the same rate for the year 1900.

VI. That this valuation and assessment makes the municipal taxes on the shares of your orator for the year 1899 the sum of $43.27 being on the assessed value of $14.57 per share, and at the rate of one dollar and ninety-eight cents on the hundred dollars, and the State taxes of $3.87 on said shares of stock. And the municipal tax for the year 1900 the sum of $36.49 being on the assessed value of $14.57 per share, and at the rate of one dollar and sixty-seven cents on the hundred dollars; the State tax for both years being on the same assessed value of $14.57 per share and at the rate of seventeen and three quarter cents on the one hundred dollars. Payment of which said sums of $36.49 and $43.27 James P. Gorter, city collector has demanded on behalf of the Mayor and City Council of Baltimore from the said The New York and Baltimore Transportation Line, and the payment of which the said James P. Gorter threatens to enforce against said New York and Baltimore Transportation Line; and the payment of the said State tax of $3.87 for each of said years 1899 and 1900 has been demanded by Murray Vandiver, State treasurer of Maryland, under a threatened penalty as prescribed by chapter 244 of the Acts of 1890 of the General Assembly, and with a threat to enforce the payment of said tax, if not paid by said corporation.

VII. That the said The New York and Baltimore Transportation Line is about to comply with the said demands of the said James P. Gorter and the said Murray Vandiver, and pay said taxes so demanded unless restrained therefrom by this honorable court, and to thus place the New York and Baltimore Transportation Line in the position of creditor of your orator in the amount of said taxes, and

making your orator a debtor of said New York and Baltimore Transportation Line without his consent and against his will.

VIII. That your orator is advised and therefore charges that the above scheme of taxation and the provisions of law establishing the same as herein set forth by the State of Maryland, under which the above mentioned taxes have been imposed and laid, and by which they are now demanded to be paid and are attempted to be collected is an attempt on the part of the State of Maryland, and of the mayor and city council of Baltimore, to levy a tax, not upon the corporation within its borders, nor upon the capital stock of such corporation, but to levy such tax upon the person of the non-resident shareholders of said stock and to subject the said shareholders to a personal liability for the same and to create a personal debt therefor. That the said attempt upon the part of the State of Maryland and the said mayor and city council of Baltimore to levy said taxes is illegal and void, because it is beyond the power and jurisdiction of the said State of Maryland and the mayor and city council of Baltimore to levy a personal tax upon your orator, a non-
5 resident of the State of Maryland, and that the attempt to enforce the payment of said tax under and by virtue of the provisions of the statutes aforesaid, is an attempt to take from your orator his property without due process of law or color of right, and in contravention of the Constitution of the United States and of the fourteenth amendment thereto.

IX. And your orator further shows unto your honor, that by the statute laws of Maryland no provision is made for any hearing or opportunity to be heard by your orator or by another stockholder in the said New York and Baltimore Transportation Line from the valuation and assessment placed upon said shares of stock by the tax commissioners of Maryland.

And your orator is advised, believes and therefore charges that a reasonable opportunity to be heard upon or in regard to the valuation of said shares of stock at some time, and at some place by the owners thereof, by whom and out of whose funds the said tax is to be paid, is essential to the validity of said tax; and that in attempting to levy and collect said tax the State and Baltimore municipal authorities are attempting to take property without the due process of law, in contravention of the twenty-third article of the declaration of rights of this State and also in contravention of the fourteenth amendment of the Constitution of the United States.

XI. Wherefore your orator prays for the following relief:

(a.) That the Mayor and City Council of Baltimore and James P. Gorter collector of taxes therein, be restrained and enjoined from collecting from the said the New York and Baltimore Transportation Line the above mentioned tax for municipal purposes of $43.27 claimed to be due from your orator for the municipal tax on the said shares of the stock of your orator in said New York and Baltimore Transportation Line for the year 1899, and from the said New York and Baltimore Transportation Line the above mentioned tax

for municipal purposes of $36.49 claimed to be due from your orator for the municipal tax of the said shares of the stock of your orator in the said New York and Baltimore Transportation Line for the year 1900.

(*b.*) That Murray Vandiver, treasurer of Maryland, be restrained and enjoined from collecting from the New York and Baltimore Transportation Line the above mentioned tax for State purposes of $3.87 claimed to be due from your orator for the State tax on the shares of stock of your orator in said New York and Baltimore Transportation Line for the year 1899, and also from collecting from the New York and Baltimore Transportation Line the above mentioned tax for State purposes of $3.87 claimed to be due from your orator for the State tax on the shares of stock of your orator in the said New York and Baltimore Transportation Line for the year 1900.

6 (*c.*) That the New York and Baltimore Transportation Line be restrained and enjoined from paying to the Mayor and City Council of Baltimore or to James P. Gorter, city collector of taxes in said city, the above mentioned municipal taxes for the years 1899 and 1900, on the shares of stock of your orator; and that

(*d.*) The said New York and Baltimore Transportation Line be restrained and enjoined from paying to Murray Vandiver, State treasurer, the above mentioned State taxes for the years 1899 and 1900 on the shares of stock of your orator; and

(*e.*) That your orator may have such other and further relief as equity and his case may require.

May it please your honor to grant unto your orator the writ of injunction as above prayed, and also a writ of summons directed to the said Mayor and City Council of Baltimore, and to James P. Gorter, city collector, and to Murray Vandiver, State treasurer, and to the New York and Baltimore Transportation Line commanding them to be and appear in this court on some certain day to be named therein, to answer the premises and abide by and perform such decree or decrees to be passed therein.

And as in duty bound &c.,

WM. P. MAULSBY,
WILLIAM S. BRYAN, JR.,
Sols. for Pl'ff.

STATE OF PENNSYLVANIA, } *To-wit:*
City of Philadelphia, }

Before me a notary public for the Commonwealth of Pennsylvania residing in the city of Philadelphia, personally appeared James C. Corry, the plaintiff in the foregoing proceedings, who being duly sworn says the facts and statements therein made are true to the best of his knowledge and belief.

JAS. C. CORRY.

Sworn and subscribed before me this 26th day of July, 1900.

[SEAL.] BENJ. H. RENSHAW,
Notary Public.

Order for Appearance.

Filed 2nd September, 1900.

In the Circuit Court No. 2 of Baltimore City.

JAMES C. CORRY, Plaintiff,
vs.
MAYOR AND CITY COUNCIL OF BALTIMORE, JAMES P. GORTER, Collector; Murray Vandiver, Treasurer of Maryland, and New York and Baltimore Transportation Line, Defendants.

7 Mr. Clerk:

Enter my appearance for The New York and Baltimore Transportation Line, one of the defendants herein.

CHARLES S. RICH.

Subpœna to Answer Bill of Complaint.

Issued 20th September, 1900.

Equity subpœna.

The State of Maryland to the Mayor and City Council of Baltimore, James P. Gorter, collector of Baltimore city, Greeting:

We command and enjoin you, that all excuses set aside, you be in your person before the circuit court No. 2 of Baltimore city, at the court house in said city, on the second Monday of October 1900 to answer the complaint of James C. Corry against you in said court exhibited.

Hereof fail not, as you will answer the contrary at your peril:

Witness the Honorable Henry D. Harlan, chief judge of the supreme bench of Baltimore city, the 10th day of Septe*b*mer, 1900, issued the 20th day of September, in the year 1900.

ALFRED J. SCHULZ, *Clerk.*

Summoned, Ambo.

"Solomon." Fees $0.80.

JOHN B. SCHWATKA, *Sheriff.*

Sept. 21, 1900.—Service admitted.

OLIN BRYAN,
1st Ass. City Sol.

Enter my appearance for defendant.

OLIN BRYAN.

Circuit Court for Anne Arundel County.

ANNAPOLIS, MD., *Oct. 6th*, 1900.

Mr. Alfred J. Schultz.

DEAR SIR: Mr. Vandiver has not been in Annapolis since this summons was handed me. I visited his office daily and made inquiries as to his coming, but no one could tell when he would be in the city, so I return *non est*.

Yours respectfully, JOHN BOND, *Sheriff*.

Subpœna to Answer Bill of Complaint.

Issued 20th September, 1900.

Equity subpœna.

The State of Maryland to Murray Vandiver, treasurer of the State of Maryland, of Anne Arundel county, Greeting:

We command and enjoin you, that all excuses set aside you be in your person before the circuit court No. 2 of Baltimore
8 city, at the court house in said city, on the second Monday of October, 1900 to answer the complaint of James C. Corry, against you in said court exhibited. Hereof fail not, as you will answer the contrary at your peril:

Witness the Honorable Henry D. Harlan, chief judge of the supreme bench of Baltimore city, the 10th day of September, 1900, issued the 20th day of September, in the year 1900.

ALFRED J. SCHULZ, *Clerk*.

Alfred J. Schulz, clerk ct. ct. No. 2 of Baltimore city to sheriff of Anne Arundel Co. Md.

Received this 21st day of September, 1900 and forthwith delivered to the sheriff of Anne Arundel county.

GEO. WELLS, *Clerk*.

Oct. 6, 1900.—*Non est*.

JOHN BOWIE, *Sh'r'ff*.

Subpœna to Answer Bill of Complaint.

Issued the 8th day of October, 1900.

Equity subpœna.

The State of Maryland to Murray Vandiver, treasurer of the State of Maryland (Democratic headquarters, Eutaw house), of Baltimore city, Greeting:

We command and enjoin you, that all excuses set aside, you be in your person before the circuit court No. 2 of Baltimore city, at the court house in said city, on the second Monday of November, 1900 to answer the complaint of James C. Corry, against you in said court exhibited. Hereof fail not, as you will answer the contrary at your peril:

Witness the Honorable Henry D. Harlan, chief judge of the supreme bench of Baltimore city, the 10th day of September, 1900 issued the 8th day of October, in the year 1900.

ALFRED J. SCHULZ, *Clerk.*

Summoned.

JOHN B. SCHWATKA, *Sheriff.*

(Stanton.) Fees $0.40.

9 *Joint and Several Answer of the Mayor and City Council of Baltimore and James P. Gorter, Collector.*

Filed 23rd November, 1900.

Circuit Court No. 2 of Baltimore City.

JAMES C. CORRY, Plaintiff,

vs.

THE MAYOR AND CITY COUNCIL OF BALTIMORE, JAMES P. GORTER, Collector; Murray Vandiver, Treasurer of the State of Maryland, and The New York and Baltimore Transportation Line, a Body Corporate, Defendants.

To the honorable the judge of said court:

The joint and several answer of the Mayor and City Council of Baltimore and James P. Gorter, collector, to the bill of complaint of James C. Corry against them and others in the circuit court of Baltimore city exhibited, respectfully represents unto your honor:

1. That they neither admit nor deny the allegations set forth in the first and second paragraphs of the bill, but demand proof thereof.

2. That they deny that the laws of the State of Maryland, in reference to the subject-matter of this suit, are properly or fully set forth in paragpraph three of the bill, and they respectfully refer the court to the statutes upon the subject, as embodied in the Code of Public General Laws of the State of Maryland, and the Code of Public Local Laws of the city of Baltimore.

3. In answer to the fourth paragraph of said bill, while they are advised that it is — proper to set forth in a bill of equity legal conclusions, or to cite authorities in support of the propositions contended for in the bill, nevertheless, in answer to said paragraph, they state that the conclusions of law therein arrived at are not in accordance with the statutes of the State or with the decisions of the court of appeals governing the subject, and that neither the statutes nor the decisions have been fully and properly referred to. In further answer to said paragraph, they state that they can neither admit nor deny the number of shares of said stock held by non-residents of the State of Maryland, as set forth in said paragraph, in the defendant corporation.

4. That they can neither admit nor deny the allegations of the fifth, sixth and seventh paragraphs of said bill, but demand proof thereof.

5. They deny the construction that the complainant places upon the statutes of the State in relation to the subject matter of this suit in the eighth paragraph of the bill, they deny that the said system of taxation is illegal and void as therein claimed, and they deny that there is any attempt to take from the complainant his property without due process of law, in contravention of the Constitution of the United States and of the fourteenth amendment thereto.

6. They deny the allegations contained in the ninth paragraph of the bill, and they claim that full provision is made by the statutes of the State for a hearing in reference to the valuation and assessments of the stock therein set forth, and they refer to the laws of the State in support of this proposition; and they again deny, in answer to the allegations of said paragraph of said bill, that either the State or the municipal authorities are attempting to take property without due process of law, either in contravention of the declaration of rights of the State of Maryland, or of the Constitution of the United States, or of any amendment thereto.

7. And now having answered said bill, in further answer thereto, your respondents state that the system of taxation now in force in the State of Maryland, both as regards State and city taxation, is a perfectly valid system, and does not violate any of the articles of the bill of rights, or any of the provisions of the Constitution of the United States or of any amendment thereto. That the State of Maryland had a perfect right to establish and enforce the system of taxation that now exists therein, and which has existed from time immemorial, in regard to all stock issued by corporations that it has chartered, and which derive their corporate powers from the legis-

lation of the State and are created by it. That the taxes referred to in the bill of complaint are not collected from the stockholders of the corporation, but, on the contrary, under the statutes and under the system aforesaid, are collected from the corporation, and that The New York and Baltimore Transportation Line, one of the defendants in this case, is a Maryland corporation and is a debtor to the State of Maryland and to the city of Baltimore for the amount of taxes due and owing by it by virtue of the provisions of the statutes of Maryland relating to said subject.

Wherefore and for the reason herein given, your respondents state that they are advised that no injunction can be issued restraining either the State of Maryland, through its officers, or the mayor and city council of Baltimore and its collector, from collecting from the New York and Baltimore Transportation Line the State or municipal taxes which it owes, and that no injunction will lie to enjoin the said company from paying said taxes. And they therefore pray that said bill may be dismissed.

And as in duty &c.

OLIN BRYAN,
Att'y for M. & C. C. of Balto. and James P. Gorter, Collector.

11 STATE OF MARYLAND, *Baltimore City,* } *To-wit:*

I hereby certify, that on this 23rd day of November, in the year nineteen hundred, before me, the subscriber a justice of the peace of the State of Maryland, in and for Baltimore city aforesaid, personally appeared James P. Gorter, collector, and made oath in due form of law, both for himself and as agent of the Mayor and City Council of Baltimore, that the matters and things in the aforegoing answer are true to the best of his knowledge, information and belief.

C. CHAS. FRIEDLE, *J. P.*

Answer of Murray Vandiver, Treasurer of the State of Maryland.

Filed 26th November, 1900.

In the Circuit Court No. 2 of Baltimore City.

JAMES C. CORRY, Plaintiff,
vs.
MAYOR AND CITY COUNCIL OF BALTIMORE, JAMES P. GORTER, Collector; Murray Vandiver, Treasurer of the State of Maryland, and The New York and Baltimore Transportation Line, a Body Corporate, Defendants.

To the honorable the judge of said court:

The answer of Murray Vandiver, treasurer of the State of Maryland, to the bill of complaint of James C. Corry against him and

others in the circuit court of Baltimore city exhibited, respectfully represents unto your honor:

1. That he neither admits nor denies the allegations set forth in the first and second paragraphs of the bill, but demands proof thereof.

2. That he denies that the laws of the State of Maryland, in reference to the subject matter of this suit, are properly or fully set forth in paragraph three of the bill, and he respectfully refers the court to the statutes upon the subject, as embodied in the Code of Public General Laws of the State of Maryland, and the Code of Public Local Laws of the city of Baltimore.

3. In answer to the fourth paragraph of said bill, while he is advised that it is not proper to set forth in a bill of equity legal conclusions, or to cite authorities in support of the propositions contended for in the bill, nevertheless, in answer to said paragraph, he states that the conclusions of law therein arrived at are not in accordance with the statutes of the State or with the decisions of the court of appeals governing the subject, and that neither the statutes nor the decisions have been fully and properly referred to. In further answer to said paragraph, he states that he can neither
12 admit nor deny the number of shares of said stock held by non-residents of the State of Maryland, as set forth in said paragraph, in the defendant corporation.

4. That he can neither admit nor deny the allegations of the fifth, sixth and seventh paragraphs of said bill, but demand proof thereof.

5. He denies the construction that the complainant places upon the statutes of the State in relation to the subject matter of this suit in the eighth paragraph of the bill, he denies that the said system of taxation is illegal and void as therein claimed, and he denies that there is any attempt to take from the complainant his property without due process of law, — contravention of the Constitution of the United States and the fourteenth amendment thereto.

6. He denies the allegations contained in the ninth paragraph of the bill, and he claims that full provision is made by the statutes of the State for a hearing in reference to the valuation and assessment of the stock therein set forth, and he refers to the laws of the State in support of this proposition; and he again denies, in answer to the allegations of said paragraph of said bill, that either the State or the munici-al authorities are attempting to take property without due process of law, either in contravention of the declaration of rights of the State of Maryland, or of the Constitution of the United States, or of any amendment thereto.

7. And now having answered said bill, in further answer thereto, your respondent states that the system of taxation now in force in the State of Maryland, both as regards State and city taxation, is a perfectly valid system, and does not violate any of the articles of the bill of rights, or any of the provisions of the Constitution of the United States or of any amendment thereto. That the State of

Maryland had a perfect right to establish and enforce the system of taxation that now exists therein, and which has existed from time immemorial, in regard to all stock issued by corporations that it has chartered, and which derive their corporate powers from the legislation of the State and are created by it. That the taxes referred to in the bill of complaint are not collected from the stockholders of the corporation, but on the contrary, under the statutes and under the system aforesaid, are collected from the corporation, and that the New York and Baltimore Transportation Line, *and* of the defendants in this case, is a Maryland corporation and is *more* for the amount of taxes due and owing by it by virtue of the provisions of the statutes of Maryland relating to said subject. And this respondent further states, that so far as the suit against him as treasurer of the State of Maryland is concerned, that it is in effect a suit against the State, and that the State is not liable or amenable to suit.

Wherefore and for the reasons herein given, your respondent states that he is advised that no injunction can be issued restraining either the State of Maryland, through its officers, or the
13 Mayor and City Council of Baltimore and its collector, from collecting from the New York and Baltimore Transportation Line the State or municipal taxes which it owes, and that no injunction will lie to enjoin the said company from paying said taxes. And he therefore prays that said bill may be dismissed.

And as in duty, &c.

ISIDOR RAYNER,
Sol. for Vandiver, Treas., Md..

STATE OF MARYLAND, *City of Baltimore*, } *sct:*

I hereby certify, that on this 24th day of November in the year nineteen hundred, before me, the subscriber, a notary public of the State of Maryland in and for Baltimore city aforesaid, duly commissioned and qualified, personally appeared Murray Vandiver, treasurer of the State of Maryland, and made oath in due form of law that the matters and things in the aforegoing answer stated are true to the best of his knowledge, information and belief.

In testimony whereof I have hereunto set my hand and affixed my notarial seal.

[SEAL.]

GEO. A. FOOS,
Notary Public.

Answer of the New York and Baltimore Transportation Line.

Filed 27th November, 1900.

In the Circuit Court No. 2 of Baltimore City.

JAMES C. CORRY, Plaintiff,
vs.
MAYOR AND CITY COUNCIL OF BALTIMORE, JAMES P. GORTER, Collector; Murray Vandiver, Treasurer of the State of Maryland, and The New York and Baltimore Transportation Line, a Body Corporate, Defendants.

The answer of the New York and Baltimore Transportation Line.

This defendant, answering, says:

That it admits the matters and facts in the bill of complaint herein filed, to be true and submits the matters of law therein and the rights of this defendant to the action of this honorable court.

CHARLES S. RICH,
Solicitor for the New York and Baltimore Transportation Line.

14 *General Replication.*

Filed 27th November, 1900.

In the Circuit Court No. 2 of Baltimore City, —— Term, 189–.

JAMES C. CORRY
vs.
MAYOR AND CITY COUNCIL OF BALTIMORE, JAMES P. GORTER, Collector; Murray Vandiver, Treasurer, *et als.*

The plaintiff joins issue on the matters alleged in answer of The Mayor and City Council of Baltimore, James P. Gorter, collector, Murray Vandirver, treasurer and The N. Y. and Balto. Transportation Line, the defendants herein, so far as the same may be taken to deny or avoid the allegations of the bill.

W. P. MAULSBY,
WILLIAM S. BRYAN, JR.,
Solicitors for Plaintiff.

Petition and Order to Take Testimony under 35th Rule and Order of Court Thereon.

Filed 17th April, 1902.

In the Circuit Court No. 2 of Baltimore City.

JAMES C. CORRY
vs.
THE MAYOR AND CITY COUNCIL OF BALTIMORE ET AL.

To the honorable the judge of the circuit court No. 2 of Baltimore city:

The plaintiff in this case respectfully shows unto your honor:

That he desires to examine orally, in open court and in the presence of your honor, certain witnesses who can testify to the facts and matters relevant to the allegations in the bill of complaint filed in this case.

Your petitioner therefore prays your honor to pass an order, according to the statutes for such cases made and provided.

And as in duty bound will ever pray.

WILLIAM S. BRYAN, JR.,
Solicitor for Plaintiff.

Upon the foregoing petition and application, it is this 17th day of April, A. D. 1902, ordered that the petitioner have leave to take testimony as prayed and that the testimony to be offered be
15 taken as required by the 35th rule of this court. And it is further ordered that a copy of this petition and order be served on the defendants or their solicitors on or before the 24th day of April, 1902.

PERE L. WICKES.

Service of copy admitted, Olin Bryan, att'y for M. & C. C. Copies of within order of court served on Isidor Rayner and Charles S. Rich solicitors on the 21st day of April 1902 and on Olin Bryan and James S. Gorter solicitors on the 22nd day of April. 1902 in the presence of Frank J. Corrigan.

GEORGE WARFIELD, *Sheriff.*

Agreement of Counsel.

Filed 24th June, 1902.

In the Circuit Court No. 2 of Baltimore City.

CORRY
vs.
M. & C. C. OF BALTIMORE ET AL.

It is agreed that the several answers in this case be withdrawn and that demurrers be considered as filed under proper affidavit by each of the defendants herein.

WILLIAM S. BRYAN, JR., *For Pl'ff.*
OLIN BRYAN,
Attorney for Mayor and City Council and Other Defendants Represented by Him.
CHARLES S. RICH,
Attorney for N. Y. & Balto. Transportation Line.
ISIDOR RAYNER,
Att'y for Murray Vandiver, State Treasurer.

Decree of Court.

Filed 24th June, 1902.

In the Circuit Court No. 2 of Baltimore City.

CORRIE
vs.
MAYOR & CITY COUNCIL OF BALTIMORE ET AL.

The demurrers of the defendants in this case coming on to be heard and the proceedings being read and considered and the court being of opinion that the method of taxation of the stock in Maryland corporations held by non-residents of the State of Maryland is valid and lawful, it is this 24th day of June 1902, ordered, adjudged and decreed that the demurrers to the bill of complaint be and the same are hereby sustained, and it is further ordered, adjudged and decreed that the bill of complaint be and hereby is dismissed with costs.

J. UPSHUR DENNIS.

16 *Prayer for Appeal.*

Filed 25th July, 1902.

In the Circuit Court No. 2 of Baltimore City.

CORRIE
vs.
M. & C. C. OF BALTIMORE ET AL.

Mr. Clerk:

Enter an appeal from the decree of the court here to the court of appeals of Maryland.

WM. P. MAULSBY, JR.,
WILLIAM S. BRYAN, JR.,
Attorneys for Pl'ff.

Which said appeal being by the court here also granted, it is thereupon ordered by the court here that a transcript of the record of proceedings in the case aforesaid be transmitted to the court of appeals of the State of Maryland under the rules thereof and the same is transmitted accordingly.

Test: THOMAS A. ROBINSON,
Clerk of the Circuit Court No. 2 of Baltimore City.

In testimony whereof that the foregoing is a full and true transcript of the aforegoing papers taken from the record of proceedings in the circuit court No. 2 of Baltimore city in the cause therein mentioned,

I hereto set my hand and affix the seal of the said circuit court No. 2 of Baltimore city on this fifteenth day of September in the year of our Lord nineteen hundred and two.

Test:

[SEAL.] THOMAS A. ROBINSON,
Clerk of the Circuit Court No. 2 of Baltimore City.

JAMES C. CORRY
vs.
MAYOR AND CITY COUNCIL OF BALTIMORE and Others.

This, cause came on to be heard, was taken up and argued by counsel, on consideration whereof the court finds there is no error apparent on the record in the proceedings and judgment of the lower court. It is therefore on the 16th day of January 1903, considered by the court that the said judgment be, and the same hereby is affirmed, and that the appellee recover of the appellant his costs &c.

And on the same day to wit January 16th, 1903 there was filed in said cause the following opinion in the words and figures to wit:

17 *Opinion by Briscoe, J.*

Filed January 16th, 1903.

Court of Appeals of Maryland, January Term, 1903.

JAMES C. CORRY
vs.
THE MAYOR AND CITY COUNCIL OF BALTIMORE and Others.

James C. Corry, a resident of the State of Pennsylvania, and a non-resident of Maryland, filed a bill in circuit court No. 2 of Baltimore city, on behalf of himself and other non-resident stockholders, of the New York and Baltimore Transportation Line, a corporation, of the State of Maryland against The Mayor and City Council of Baltimore, James P. Gorter, collector, Murray Vandiver,
18 treasurer of the State of Maryland and The New York and Baltimore Transportation Line, to restrain and enjoin the defendants from collectng State and municipal taxes for the year 1899, on 150 shares of the capital stock of the transportation company, of the par value of twenty dollars per share.

The defendants answered the bill but subsequently these answers were withdrawn and by an agreement, demurrers were considered, as filed by the defendants. And from a decree of the circuit court of Baltimore city, of the 24th of June, 1902, sustaining the demurrer and dismissing the plaintiff's bill, this appeal has been taken.

The principal and important question presented by the case, is whether the method of taxation provided by the statutes of
19 Maryland, of stocks in Maryland corporations held by non-residents of the State is valid and constitutional. The provisions of the several statutes of the States, relating to the tax will be found in section- 2, 4, 141 and 144, of the 81st article of the Code of Public General Laws and in the supplement of the Code of 1900.

These statutes distinctly provide that the shares of capital stock of all corporations, whether owned by residents or non-residents shall be liable to assessment and taxation, and by section 131 of the Code the stock held by non-resident stockholders in steamboat or other companies &c. is situate for the purpose of taxation at the place where its principal office for the transaction of business is located, that is, in this case in the city of Baltimore.

The mode, method and manner of the assessment, valuation and taxation, as applicable to stock held by non-resident share-
20 holders is clearly and fully provided and directed by the several statutes, and it is admitted that the taxes in this case were imposed according to the provisions of the statutes.

The appellant urges four grounds why the tax laws of the State here in dispute are not constitutional and valid:

(1.) Because the tax is a personal one, and is beyond the powers and jurisdiction of the State to levy a personal tax against a non-resident of the State,

(2.) To enforce the collection "is taking property without due process of law," or color of right and in contravention of the Constitution of the United States.

(3.) That no provision is made by the statutes for a hearing or opportunity to be heard, by the non-residents of the State.

(4.) That the levy of the city tax upon stock held by non-
21 residents in corporations in Baltimore city is exempt by the new charter, (act of 1898 chapter 123).

Some of the questions raised on this appeal, can hardly, at this date, be regarded as *res nova*, in this court. Similar statutes have been enacted from time to time, by the General Assembly of the State, imposing a tax upon corporate stock, in Maryland corporations, held by non-residents and in one form or another, have been brought to this court for construction. The principle of this legislation has been upheld and recognized by this court, in all the cases, except where the statute was plainly in contravention of the State or Federal constitutions. Whatever, may be the adjudications, in other States, it is quite certain, that in the construction of this statute we are to be controlled by the decisions of our own court, in so far as they are applicable to the case. It is distinctly declared by the 15th
22 article of the bill of rights that "every person in the State or person *holding property therein*, ought to contribute his proportion of public taxes for the support of the government according to his actual worth in real or personal property.

In the case of The Mayor and City Council of Baltimore *vs.* Baltimore City Passenger Railway Company, 57 Md. 31, it is said; that express provision is made by the act for valuing the stock owned by non-residents at the place, where the company has its principal office for the transaction of business, that the shares of stock held by non-residents are liable to taxation, and that for the purposes of taxation, such shares are situate in the city of Baltimore, where the appellee has its principal office.

The provisions of the statute under discussion, clearly fixes
23 the situs of stock, held by non-residents for taxation, at the place of the principal office of business of the corporation within the State, and the shares of stock being taxable property under the statute, the State and municipality of Baltimore under the conceded facts of this case, clearly had jurisdiction to impose a tax upon the property, situate here, and to collect taxes thereon, notwithstanding the fact, the appellant was a non-resident of the State.

It would answer no good purpose, to discuss at length the question of the constitutionality of this tax in the light of the many and recent adjudications of this court, upon the subject, but we need

only refer to the following cases, which sustain the conclusion, we have reached. American Coal Co. *vs.* County Commissioners of Allegany County, 59 Md. 185; Electric Light & Power Co. *vs.* State 79 Md. 70; Crown Cork and Seal Co. *vs.* State, 87 Md. 696; The American Casualty Insurance Co. case 82 Md. 563; Bonaparte *vs.*
24 State, 63 Md. 456; Baldwin *vs.* State, 85 Md. 155 and Kinehart *vs.* Howard, 90 Md. 1.

The second and third objections urged by the appellant are, that section 144 of article 81 of the Code, fails to provide a notice to the shareholder of the assessment and valuation, of this property and he was therefore; without an opportunity to be heard as to the value of the shares, and to enforce the collection, would be "taking property without due process of law."

This section of the code was under consideration in the recent case of James Clark Distilling Co. *vs.* Mayor &c. of Cumberland, 95 Md. (52 Atl. Rep.) and we distinctly said; that a notice to each shareholder is unnecessary, because the corporation represents the shareholder. If the valuation is not satisfactory, an appeal may be taken by the corporation for the shareholder, an opportunity is thus afforded for the shareholders to be heard through the cor-
25 poration and that gratifies all the requirements of the law."

It will be also seen, that section- 141 and 144 of article 81 of the Code do not contemplate a personal notice to the property holder, but a compliance with the requirements of the statute is a sufficient notice to the non-resident property holder of the assessment and valuation of the property. We find nothing in the case of Gettings *vs.* Mayor &c., 95 — Ulman *vs.* Baltimore, 72 Md.; County Commissioners Allegany Co. *vs.* Union Mining Co. 61 Md. relied upon by the appellant, in conflict with this construction of the statute.

The appellant's fourth contention is that the shares of stock held by him, are exempt from city taxes by reason of the provision of the city charter (Acts of 1898, chapter 123), which provides; that no stocks, bonds, mortgages, certificates or other evidences of in-
26 debtedness of any bank, or other corporation situate within the limits of the city, which are owned or held by persons, residing without said limits shall be subject to taxation for the purpose above set forth, section 6, sub-section Taxes city charter, (Acts of 1898, chapter 123).

This section of the charter, has no reference to stocks, bonds, &c. owned and held by non-residents of the State. It applies to persons living within the State, but without the limits of Baltimore city, that is, to stocks, bonds &c. held by persons residing within the counties and cities of the State. It, therefore, has no application to this case.

We have examined the Federal decisions bearing upon the questions raised on this appeal, and find them in harmony with the views, we have expressed. We cite the following cases in support

of the conclusion reached by us in this case. New Orleans *vs.*
27 Stempel, 175 U. S. 309; Savings & Loan Society *vs.* Multnomah, 169 U. S. 421; McCulloh *vs.* Maryland, 4 Wheaton, 316; Coe *vs.* Errol, 116 U. S. 517; Pullman Car Co. *vs.* Pa. 141 U. S. 18; Nevada Bank *vs.* Sedgwick, 104 U. S. 111; Kirtland *vs.* Hotchkiss, 100 U. S. 491; Bristol *vs.* Washington Co. 177 U. S. 139.

We hold, therefore, that the shares of stock held and owned by the appellant, a non-resident of the State, in a Maryland corporation, are liable to taxation, under the statutes of this State, and that the tax is not in violation of either the State or Federal Constitution.

For these reasons the decree of the circuit court No. 2 of Baltimore city, will be affirmed, with costs.

Decree affirmed, with costs.

And on the same day and year aforesaid January 16th 1903 there was filed in said cause the following decree in the words and figures to wit:

28 *Decree of the Court of Appeals, January 16th, 1903.*

Court of Appeals of Maryland, January Term, 1903.

JAMES C. CORRY
vs.
THE MAYOR AND CITY — OF BALTIMORE ET AL.

Filed January 16th, 1903.

The appeal in this case standing ready for hearing was argued by counsel for the respective parties, and the proceedings have since been considered by the court.

It is thereupon, this sixteenth day of January A. D. 1903, by the court of appeals of Maryland, and by the authority thereof, adjudged, ordered and decreed tha- the decree of the circuit court number two of Baltimore city made in this cause on the twenty fourth day of June in the year nineteen hundred and two be and the same is hereby affirmed with costs.

29 JAMES McSHERRY.
DAVID FOWLER.
JOHN P. BRISCOE.
A. HUNTER BOYD.
SAMUEL D. SCHMUCKER.

30 *Petition for the Writ of Error.*

Filed July 1st, 1903.

In the Court of Appeals of Maryland.

JAMES C. CORRY
vs.
MAYOR AND CITY COUNCIL ET ALS.

To the Honorable James McSherry, chief judge of the court of appeals of the State of Maryland:

James C. Corry, the plaintiff in the court below, and the appellant in this court, respectfully shows:

That there is error in the record of proceedings in this cause in this court, the court of appeals of Maryland, the same being the highest court of law and equity of the State of Maryland, in
31 which decision can be had in this controversy, in that this court has on January 16th, 1903, rendered a decision affirming the decree of the circuit court No. 2 of Baltimore city, dismissing the bill of complaint of the said James C. Corry; and this appellant, James C. Corry respectfully shows that in the decision and decree, the error in which is herein complained of, there was drawn in question the validity of statutes of the States of Maryland under the Constitution of the United States and under the 14th amendment thereto; and that by said decision a right was claimed by the said James C. Corry, under said Constitution of the United States and under the 14th amendment thereto, and that the said decision in this court is against the right of the said James C. Corry, especially set up and claimed; all of which appears in the records and proceedings in this suit, whereby manifest error has happened
32 to the great damage of the said James C. Corry.

Wherefore the said James C. Corry, by his attorneys, William P. Maulsby and William S. Bryan, Jr., prays for an allowance of a writ of error and such other process as may cause the said error to be corrected by the Supreme Court of the United States.

And as in duty &c.

WILLIAM S. BRYAN, JR.,
Attorney for James C. Corry.

In the Court of Appeals of Maryland.

JAMES C. CORRY
vs.
MAYOR AND CITY COUNCIL ET ALS.

In this cause application having been made — me, the Hon-
33 orable James McSherry, chief judge of the court of appeals of the State of Maryland, that being the highest court of record in this State, in which said cause can be heard, for the allowance of a writ of error to remove said cause to the Supreme Court of the United States, for review, in accordance with the Constitution and laws of the United States, and the rules of practice of the Supreme Court of the United States, and for the fixing and approving of the bond on the removal of the said cause to the Supreme Court of the United States,

It is hereby ordered this second day of June 1903, that the said writ of error be and the same is hereby allowed, and that the same may be issued by any officer authorized to issue the same, and the penalty in the bond is hereby fixed at the sum of $ one thousand dollars with Clarance Shriver, as surety thereon.

JAMES McSHERRY.

34 *Writ of Error.*

Filed July 1st, 1903.

Court of Appeals of Maryland.

JAMES C. CORRY, Appellant,
vs.
MAYOR AND CITY COUNCIL OF BALTIMORE ET ALS., Appellees.

UNITED STATES OF AMERICA, *ss:*

[The Seal of the Circuit Court, Maryland.]

The President of the United States of America to the honorable the judges of the court of appeals of Maryland, Greetings:

Because in the record and proceedings, as also in the ren-
35 dition of the judgment of a plea which is in the said court of appeals of Maryland before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between James C. Corry, plaintiff, and plaintiff in error, and Mayor and City Council, *et als.* defendants and defendants in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United

States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repu-nant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and
36 the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said James C. Corry, plaintiff in error, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct
37 that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the twenty-seventh day of June in the year of our Lord one thousand nine hundred and three.

JAS. W. CHEW,
Clerk of the Circuit Court of the United States for the District of Maryland.

Allowed by
JAMES McSHERRY,
Chief Judge of the Court of Appeals of the State of Maryland.

38 *Assignment of Error.*

Filed July 1st, 1903.

Court of Appeals of Maryland.

In the Court of Appeals of Maryland.

JAMES C. CORRY
vs.
MAYOR AND CITY COUNCIL ET ALS.

James C. Corry, the appellant in this cause, and the plaintiff in circuit court No. 2 of Baltimore city assigns the following error in the final decision of this court, by the decree filed herein on the 16th day of January 1903;

1. The court erred in holding and deciding that the plaintiff in the court below and the appellant in this court was not entitled to maintain his bill of complaint in this cause, and in failing to reverse and remand this cause to the circuit court No. 2 of Baltimore city for further proceedings, under said bill of complaint;

2. That the court erred in deciding that the tax law of Maryland in regard to the taxation of non-residents of that State, by reason of their being holders of shares of stock in corporations created under the laws of Maryland, were valid, and that said laws were not in conflict with the Constitution of the United States and with the 14th amendment thereto.

3. That the court erred in deciding that sections 141 and 144 of article 81, of the Code of Public General Laws of the State of Maryland, were valid and were not in conflict with the Constitution of the United States and with the 14th amendment thereto, in that the said sections failed to provide for either notice to the stockholder in corporations formed under the laws of the State of Maryland, of the valuation to be placed upon the stock held by said stockholder, and failed for an opportunity to such stockholder to be heard as to the valuation of such stock before the value thereof, for purposes of taxation, is fixed by the Maryland tax officials;

4. The court erred in deciding that the tax laws of the State of Maryland, in controversy in this cause, are not unconstitutional and invalid, because;

(*a.*) The tax is a personal one and beyond the powers and jurisdiction of the State to levy as a personal tax against a non-resident of the State;

(*b.*) Because to enforce the taxation of such tax levied as a personal tax against a non-resident of the said State of Maryland, is taking property without due process of law, or color of right, and is in contravention of the Constitution of the United States.

(*c.*) Because no provision is made by the statutes of the State of Maryland, for hearing or opportunity to be heard by the non-residents of the State as to the value of shares of stock, in regard to which a personal tax is attempted to be levied upon them.

5. That the court erred in deciding that section 131 of article 81, of the Code of Public General Laws of the State of Maryland, was valid and not in conflict with the Constitution of the United States and with 14th amendment thereto, when it attempted to levy a personal tax and impose a personal debt or liability upon persons non resident of the State of Maryland, and not within the jurisdiction thereof, by reason of their ownership of shares of stock in corporations formed under the laws of the State of Maryland.

WILLIAM P. MAULSBY, JR.,
WILLIAM S. BRYAN, JR.
Attorneys for Corry, Appellant.

42 *Citation and Affidavit.*

Filed July 1st, 1903.

In the Court of Appeals of Maryland.

UNITED STATES OF AMERICA, *ss:*

To the Mayor and City Council of Baltimore; James P. Gorter, city collector; Murray Vandiver, State treasurer, and the New York and Baltimore Transportation Line, a body corporate, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the court of appeals of Maryland in a suit wherein; The — and City Council of Baltimore James P. Gorter city collector,
Murray Vandiver State treasurer and The New York and
43 Baltimore Transportation Line a body corporate are defendants in error and James C. Corry is plaintiff in error, to show cause, if any there be, whoy the judgment rendered against the said plaintiff in error as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable James McSherry, chief judge of the court of appeals of Maryland, this 27th day of June, in the year of our Lord one thousand nine hundred and three.

JAMES McSHERRY,
Chief Judge of the Court of Appeals of Maryland.

On this 30th day of June, in the year of our Lord one thousand nine hundred and three, personally appeared William S. Bryan, Jr.
before me, the subscriber, a notary public of the State
44 of Maryland in and for city of Baltimore duly commissioned and qualified and makes oath that he delivered a true copy of the within citation to Murr-y Vandiver State treasurer, to James P. Gorter city collector, to Robert M. McLane mayor and agent in this behalf of the mayor and city council of Baltimore, and to Charles W. Duff cashier and agent in this behalf of the New York and Baltimore Transportation Line, a body corporate.

Sworn to and subscribed 30th day of June, A. D. 1903.

[Seal of Thomas Kell Bradford, Notary Public, Baltimore, Md.]

THOS. KELL BRADFORD,
Notary Public.

45 *Bond.*

Filed July 1st, 1903.

Court of Appeals of Maryland.

Know all men by these presents, that we, James C. Corry, as principal, and Clarence Shriver as surety are held and firmly bound unto the Mayor and City Council of Baltimore James P. Gorter city collector, Murray Vandiver State treasure- and the New York and Baltimore Transportation Line a body corporate in the full and just sum of one thousand dollars, to be paid to the said The Mayor and City Council of Baltimore, James P. Gorter city collector Murray Vandiver State treasurer and the New York and Baltimore Transportation Line a body corporate, their certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 27th day of June, in the
46 year of our Lord one thousand nine hundred and three.

Whereas, lately at a session of the court of appeals of Maryland in a suit depending in said court between James C. Corry appellant and The Mayor and City Council of Baltimore, James P. Gorter city collector Murray Vandiver State treasurer and The New York and Baltimore Transportation Line a body corporate appellees a decree was rendered against the said James C. Corry, and the said James C. Corry, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said The Mayor and City Council of Baltimore, James P. Gorter city collector Murray Vandiver State treasurer, and The New York and Baltimore Transportation Line a body corporate citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington within 30 days from the — thereof.

47 Now, the condition of the above obligation is such, that if the said James C. Corry shall prosecute his said writ of error to effect and answer all damages and costs if he fails to make his plea good, then the above obligation to be void; else in full force and virtue.

JAS. C. CORRY. [SEAL.]
CLARENCE SHRIVER. [SEAL.]
—— ——. [SEAL.]

Sealed and delivered in presence of—
BENJ. H. RENSHAW,
As to Clarence Shriver.
R. R. ROWE.

Approved by—
JAMES McSHERRY,
Chief Judge of the Court of Appeals of Maryland.

48 STATE OF MARYLAND, *sct:*

Court of Appeals of Maryland.

I Thomas Parran, clerk of the court of appeals of Maryland do hereby certify that the foregoing is a true transcript of the record and proceedings in the case of James C. Corry *vs.* The Mayor and City Council of Baltimore *et als.* as the same remains on file in the clerk's office of the said court of appeals.

And I do further certify that the said court of appeals of Maryland, is the highest court of law or equity in said State, in which a decision can be had in said case.

Seal Court of Appeals, Maryland.

In testimony whereof, I have hereunto set my hand as clerk, and affixed the seal of the said court of appeals this ninth day of July A. D. 1903.

THOMAS PARRAN,
Clerk Court of Appeals of Maryland.

49 UNITED STATES OF AMERICA, *ss:*

[The Seal of the Circuit Court, Maryland.]

The President of the United States of America to the honorable the judges of the court of appeals of Maryland, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of appeals of Maryland before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between James C. Corry, plaintiff, and plaintiff in error, and Mayor and City Council *et als.*, defendants and defendants in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in ques-
50 tion the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said James C. Corry, plaintiff in error, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly

and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the twenty-seventh day of June, in the year of our Lord one thousand nine hundred and three.

JAS. W. CHEW,
Clerk of the Circuit Court of the United States
for the District of Maryland.

Allowed by
JAMES McSHERRY,
Chief Judge of the Court of Appeals
of the State of Maryland.

51 [Endorsed:] Court of appeals of Maryland. James C. Corry appellant *v.* Mayor & City Council of Baltimore *et al.* appellees Writ of error Mr. Clerk File this W. S. Bryan Jr. sol. for appellant Filed July 1st 1903

52 UNITED STATES OF AMERICA, *ss:*

To the Mayor and City Council of Baltimore, James P. Gorter, city collector; Murray Vandiver, State treasurer, and the New York and Baltimore Transportation Line, a body corporate, Greeting

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the court of appeals of Maryland in a suit wherein The Mayor and City Council of Baltimore, James P. Gorter city collector, Murray Vandiver State treasurer and The New York and Baltimore Transportation Line a body corporate are defendants in error and James C. Corry is plaintiff in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable James McSherry chief judge of the court of appeals of Maryland this 27th day of June, in the year of our Lord one thousand nine hundred and three.

JAMES McSHERRY,
Chief Judge of the Court of Appeals of Maryland.

53 [Endorsed:] In the court of appeals of Maryland James C. Corry *v.* M. & C. C. of Balto. *et al.* Citation & affidavit Mr. Clerk File W. S. Bryan Jr. sol. for appellant Filed, July 1st 1903

On this 30th day of June, in the year of our Lord one thousand nine hundred and three, personally appeared William S. Bryan Jr. before me, the subscriber, a notary public of the State of Maryland in and for the city of Baltimore duly commissioned and qualified and makes oath that he delivered a true copy of the within citation to Murray Vandiver State treasurer, to James P. Gorter city collector, to Robert M. McLane mayor, and agent in this behalf of the Mayor and City Council of Baltimore, and to Charles W. Duff cashier and agent in this behalf of the New York and Baltimore Transportation Line, a body corporate

Sworn to and subscribed the 30″ day of June, A. D. 1903.

[Seal of Thomas Kell Bradford, Notary Public, Baltimore, Md.]

THOS. KELL BRADFORD,
Notary Public.

Endorsed on cover: File No. 19,011. Maryland court of appeals. Term No. 86. James C. Corry, plaintiff in error, *vs.* The Mayor and City Council of Baltimore *et al.* Filed July 16th, 1903.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1904. *No. 339.*

JAMES C. CORRY

vs.

THE MAYOR AND CITY COUNCIL OF BALTIMORE ET AL.

IN ERROR TO THE COURT OF APPEALS TO THE STATE OF MARYLAND.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

This cause is brought on a writ of error to the Court of Appeals of the State of Maryland. The plaintiff is a citizen and resident of the State of Pennsylvania. He is a stockholder of the New York and Baltimore Transportation Line, one of the defendants, a Maryland corporation, incorporated by special act (1847, chap. 112.)

The revenue laws of the State provide for the taxation of resident and non-resident stockholders, the method of assessment and collection. These laws are set forth in the argument.

The State and the Mayor and City Council of Baltimore levied and were about to enforce the collection of the tax. The plaintiff filed his bill in the Circuit Court of Baltimore City seeking to enjoin the several revenue officers of the State and the Mayor and City Council of Baltimore from proceeding to collect the tax on two grounds:

(1) that the tax was a tax *in personam* on him a non-resident;

(2) that the tax was assessed without notice to him.

To this bill a demurrer was filed. Upon hearing the bill was dismissed. On appeal to the Court of Appeals the decree of the lower Court was affirmed (Corry vs. Mayor, etc., 96 Md. 310.) The plaintiff then sued out the writ of error.

SPECIFICATION OF ERROR.

The Court erred in deciding that Secs. 159 and 162 of Art. 81, Code 1888, Rev. 1903, providing for a tax on non-resident shareholders are valid. These sections impose on a non-resident a personal obligation without notice to him and are in conflict with the Constitution of the United States and the Fourteenth Amendment thereto.

Concretely stated, the whole issue is:

The validity of an Act of the Maryland Legislature, which imposes upon a non-resident holder of local property, without notice to him, a *tax in personam;* which tax has no real relation to the value of his property, and may, for a single year, exceed the total value of his property in the State.

ARGUMENT.

For the purpose of argument, it will be convenient to separate and consider in the following order the questions of law involved.

I.

That the sovereign power of taxation extends to persons residing and property situate within its boundaries. While it includes the right to tax in rem the local property of a non-resident, it does not include the right to impose a tax in personam, or a personal obligation on the non-resident himself.

There are several considerations involved in this contention, which may be properly adverted to preliminarily to the discussion of the contention itself.

1st. The contention involves the extent of the power of the State; its very existence with reference to a particular subject-matter and not merely the extent or regularity of its exercise; not whether the exercise of the power by Legislature is regular, but whether it is *intra or ultra vires, i. e.*, whether the entire legislative Act is a nullity.

2d. The consideration of this contention should not be influenced by any doubt as to whether the Act does really impose a tax *in personam;* or whether, notwithstanding the form of expression used in the Act, the tax which it imposes on the non-resident person on account of his property really differs from a tax on the property itself, *i. e.*, whether it is not really a tax *in rem.* This question is treated later.

By the term "tax *in personam*" used in this connection we mean a tax which is as much a tax on the person as a poll or capitation tax; as it is to this class of taxes that we contend the tax in question by virtue of its principles and effect belongs.

3d. In order to more accurately define our contention we concede for the purposes of this discussion:

(*a*) That a State has the power to fix for purposes of taxation the situs of all shares of stock of a domestic corporation at the domicile of the corporation.

(*b*) That it has the power to levy a tax *in rem* on such shares.

In the opinion of the Court of Appeals of Maryland on this topic, the right of the State to so fix this situs was

treated as the only question involved. (96 Md. 310 and 322.) A number of decisions of this Court were cited by the Court in its opinion. Each of these cases involves merely the question of the power of the State to localize the particular class of intangible property sought to be taxed. The right to fix the situs of shares of stock has, however, been sustained by this Court in a number of cases, among others—

Tappan vs. Merchants Bank, 19 Wall. 490.
Travelers Insurance Co. vs. Connecticut, 185 U. S. 364.

The right as to a variety of other classes of intangible property has been sustained in the following cases:

Board vs. Comptoir Natl. 191 U. S. 388.
Blackistone vs. Miller, 188 U. S. 189.
Brestol vs. Washington, 177 U. S. 133.
New Orleans vs. Stempel, 175 U. S. 309.
Savings Society vs. Multnomah Co. 169 U. S. 421.
Kirkland vs. Hotchkiss, 100 U. S. 491.

We have cited these cases for the reasons that they formed the basis of the appellee's contentions. As these cases determine only the particular class of intangible property which may be given a situs, other than the owner's domicile, and as we concede that shares of stock may be so localized, they decide only a conceded proposition and are immaterial.

This brings us to the discussion of the contention.

The extent of the taxing power and the subjects of taxation have been so often defined by this Court as to make an extended citation unneccessary. In general terms the power is defined as follows:

> "A State can no more subject to its power a single person or a single article of property whose residence or legal situs is in another State, than it can subject all the citizens all the property of such other State to

its power. The accidental circumstance that it may happen to have the means of reaching one and not the rest can make no difference."

Cooley on Taxation, 3d. Ed. 249; 2d, Ed. 555, 159.

Quoted and approved by this Court in:

Louisville Ferry Co. vs. Kentucky, 188 U. S. 385, 397.

Dewey vs. Des Moines, 173 U. S. 193, 204.

"It is obvious that it (the power of taxation) is an incident of sovereignty and is co-extensive with that to which it is an incident. All subjects over which the sovereign power extends are objects of taxation; but those over which it does not extend are upon the soundest principles exempt from taxation."

McCulloh vs. Maryland, 4 Wheaton, 316, at 429.

"The power of taxation, however vast in its character and searching in its extent, is necessarily limited to subjects within the jurisdiction of the State."

State Tax Foreign Held Bonds, 19 Wall. 319.

The same definition was made in the following cases:

Fargo vs. Hart, 193 U. S. 490, 500.

Commonwealth vs. Standard Oil Co., 101 Pa. St. 119, quoted and approved in—

Gloucester Ferry Co. vs. Pa., 114 U. S. 196, at 208.

St. Louis vs. Ferry Co. ,11 Wall. 423.

As applied to cases in which the person or owner was without the State, but the property within the State, or in which the converse of the situation, the limitation of power is thus stated:

"The State has no jurisdiction to assess a tax as a personal charge against a non-resident."

Cooley on Taxation, 3d Ed., page. 24.

In Dewey vs. Des Moines, 173 U. S. 193, the property (real estate) was within the State; the owner was a non-resident. This Court stated the limitation as follows:

> "The State may provide for the sale of the property upon which the assessment is laid, but it cannot under any guise or pretense proceed farther and impose a personal liability to pay the assessment *or any part of it.* (Page 202.)
>
> "The power to tax is limited to persons, property and business within the State and it cannot reach the person of the non-resident." (Page 204.)

In Louisville Ferry Company vs. Kentucky, 188 U. S. 385, the property was without the State, the owner within; the tax was *in rem.* Page 396:

> "While the form, mode and extent of taxation are, speaking generally, limited only by the wisdom of the legislature, the power is limited by a principle inhering in the very nature of constitutional government, namely, that the taxation imposed must have relation to the subject within the jurisdiction of the taxing government."

Baltimore vs. Hussey, 67 Md. 112.

> "The taxing power of a State must necessarily be limited to the taxation of persons and property within and subject to its jurisdiction, and if this be so the State can acquire no jurisdiction over the person of the appellee for the purpose of taxation, because she is a non-resident."

While the opinions of this Court contain many other general definitions of the taxing power and discussions of

its basis and character, still in all, the extent of the power, whether ascertained from the language of the definition or from a consideration of its character, is always stated subject to this limitation, *i. e.*, its existence as to any person depends on his residence, and on that only; the ownership of property does not extend it to a non-resident person any more than the residence of an owner extends it to extra-territorial property.

In every definition of the power its subjects are stated to the persons and things and business. The right to exercise it depends as to persons on their residence; as to things on their location. The phrase "within the State" is a separate qualification of each of the subjects. Residence is not alone the characteristic which distinguishes the taxable from the non-taxable person, but it furnishes the only distinction between the two, just as location is the only feature which distinguishes the taxable from non-taxable property. Residence and location have no cross or reciprocal influence—they are individual characteristics of separate subjects of taxation.

Property or its ownership cannot extend the power of taxation *in personam;* the person subject to the taxing power is the person who *resides;* not the person who resides *or* owns property within the State; ownership of property is not an element in the definition of the person.

It is to be noted, moreover, that if the limitation contended for by the plaintiff is not correct, then the oft-repeated definition must be changed so as to read as follows: The power of taxation extends to persons residing (or owning property) and things situate (or owned by persons residing), within the State. The portions included in the parenthesis would be necessary additions to the definition and cause real additions to the power.

The real taxing power is much more circumscribed. Considered with reference to its subjects and form of exercise, we submit the following as a correct statement of its extent:

(1) Both the person and property may be within the State. The State has the full right of taxation *in personam* and *in rem*.

(2) The person may be in the State, the property without.

(*a*) A tax may be levied *in personam* against the person on the basis of his worth and the property included in ascertaining ~~his~~ the worth.

Coe vs. Errol, 116 U. S. 517, at 524.

(*b*) The property so without the jurisdiction cannot be taxed *in rem* either directly or indirectly.

Louisville Ferry Co. vs. Kentucky, 188 U. S. 385, 396, 397, 398.

The ferry company was incorporated under the laws of Kentucky. The State provided for taxation of its franchises; valuing them at an amount equal to the capitalization of its earnings at 6 per cent. Among other property the company owned a franchise granted by Indiana, whose situs was in that State. This Court held that though the company was a subject of the State of Kentucky, the tax was indirectly a tax on property out of the State and was not subject to its power.

To the same effect is:

Fargo vs. Hart, 193 U. S. 490, 498.

(3) The property may be within the State but the person without.

(a) The property is subject to a tax *in rem*. This is directly within the power.

(b) The State has no power to tax the non-resident owner *in personam*.

This last proposition is the one involved in this case.

We submit the following cases as deciding the precise question:

Dewey vs. Des Moines, 173 U. S. 193, 203, 204.

The State of Iowa, in providing for the taxation of real estate within its borders made the tax, a tax *in personam*

against the owner, and provided also that the property should be subject to the lien of the tax.

In holding this statute void the Court used the language above quoted, that while the State could tax the property and provide for its sale, "it had no power to impose a personal liability to pay the assessment of any part of it," (page 202) because its power "did not reach the person of the non-resident owner. (Page 204.)

City of New York vs. McLean, 170 New York, 374, at 387.

In this case the same rule was applied to a non-resident stockholder. M. was a citizen of the State of New Jersey; he was a stockholder of a New York corporation. The statute provided as here for the payment of the tax primarily by the corporation; it failed to pay and suit was brought against M. in New York.

The Court said, page 383:

> "That it (the Board of Assessors) had jurisdiction to assess the shares of stock belonging to him is not denied. Did it have such jurisdiction of his person as authorized it to make a personal assessment against him? We think not."

After citing Dewey vs. Des Moines, 173 U. S. 193, and the quotation from Cooley on Taxations, *supra*, the Court continued, page 387:

> "If the statutes of the State were intended to confer on the ~~affairs~~ same of the plaintiff authority to maintain an action against the defendant and to impose on him a *personal liability* for the payment of the tax *assessed on the shares of stock*, yet so far as they attempted to confer that right they were beyond the power of the State to enact." * * *

In delivering the opinion of the Appellate Division of the Supreme Court in the same case, (67 App. Div. 590,) the Court said (page 609):

"The same rule to be deduced in my judgment from all cases is that although a State has the power to levy a tax upon personal property of a non-resident situate within its boundaries and subject to its jurisdiction, and for that purpose may separate the situs of the owner from the actual situs of the property within the State and subject it to taxation because it is within the State, yet it can only enforce payment of that tax by virtue of its jurisdiction over property, and it has not by virtue of that jurisdiction any power to subject the owner of it to a personal liability for the tax."

The defendant placed great reliance on the two following cases. In neither case, we submit, was the question really involved.

Bristol vs. Washington County, 177 U. S. 133.

The State of Minnesota provided for a tax on debts secured by mortgage on property within the State.

A citizen of New York during a number of years invested largely in such mortgages; the tax was regularly assessed but never collected; the mortgages assessed were paid and released.

The mortgagee died owning a number of other mortgages on property in Minnesota. Ancillary administration was taken out on his estate to collect them. The State filed its claim against the estate in the Minnesota administration proceedings for payment in full under a statute which made taxes a preferred claim. The claim was sustained. Two questions were involved—

1st. Whether the State could fix the situs of such debts.

2d. Whether the tax claim was valid against any mortgages other than those against which the tax was specifically assessed.

The lien was sustained. The statute did however not purport to impose the tax on the owner or on all of his estate, but only on such other mortgages as had their situs within the State. These were clearly within its jurisdiction. The power over a non-resident person or extra-territorial subject was not even involved.

Tappan vs. Merchants Natl. Bank, 19 Wall. 490.

The State of Illinois by statute provided that the situs of the stock of national banks of all resident stockholders should be in the city in which the bank was located. It was contended that under the constitution of the State the situs was in the county in which they resided, and the law was therefore void as to residents. It was then further contended that as in this event resident stockholders could not be taxed the tax on non-residents would be a discrimination forbidden by the National Banking Act.

This was the only ground on which the validity of the tax on non-residents was challenged.

Argument of Chief Justice Fuller, page 497, bot.
Statement at pages 491 and 492.

The decision of the Court was based wholly on the provisions of the National Banking Act. This Act forms a part of the charter of the national banks and provides for this liability. Charters can and frequently do undoubtedly provide for a personal liability of stockholders in various forms; the liability to creditors of the corporation is one of the common illustrations, and the liability may be thus imposed for a tax as well as for any other debt or obligation.

The Court therefore held, page 500, that under the National Banking Act the shareholders were liable because that act "made it the law of the property." The liability arose not out of the taxing power of the sovereign, but from the subscription or charter contract of the subject. In defining the power of taxation (page 499) the Court prescribed the same limitations:

"If the State has actual jurisdiction of the person of the owner it operates directly upon him. If he is absent and it has jurdiction of his property, it operates on him through his property." The Act we are discussing operates precisely conversely, *i. e.*, it operates directly on him, and on his property only through him and by the personal obligations imposed on him.

That this decision was based wholly on the National Banking Act and that State statutory or constitutional provisions relating to taxation of corporations or shareholders are not the law of the property in this sense and do not have this effect, was expressly decided by Justice Field in

County vs. South. Pac. R. R. Tax Cases, 15 Fed. Rep., 753, bot. and 754.

A consideration of the source or basis of the power moreover equally shows the same limitation. The power is, of course, one of the powers of sovereignty. The States of the United States are equal sovereigns. This equality of powers imposes a limitation on the powers of each. These limitations are territorial.

Cooley on Const. Limit., pages 3 and 4.

The plaintiff is beyond these limits, *i. e.*, in Pennsylvania; the powers cannot be extended to him, because the sovereignty and the power incident to it are in their nature incapable of territorial extension.

But while the powers of a State cannot be so extended to him it may be suggested that as the property is within the State, the State can, and has, as a condition of the right to hold it, required his subjection *in personam* to its taxing powers, and by acquiring the property he has brought his person within its jurisdiction and power.

It is, of course, true that an alien has no right to acquire and hold property, and that his subjection *in personam* can

be exacted by a fully sovereign power as a condition of the removal of the disability of alienage. The States of the United States are, however, prohibited from imposing such a condition by the provision of the Federal Constitution, which guarantees to the citizens of each State the privileges and immunities of the citizens of the several States. The right to hold property is one of these privileges. This provision is not intended to give to the citizen of one State the right to subject himself to the sovereign powers and become a citizen of another, and thus obtain the privilege of holding property as such citizen; but it guarantees to him this right without so subjecting himself, *i. e.*, as a citizen of another State; it is a privilege he has not as a subject but as an alien.

It may be suggested that as this constitutional provision is intended only to prevent discrimination between residents and non-residents, and that as resident property holders are subject to the power to tax *in personam* it can require the same subjection from a non-resident. Such a contention is unsound for various reasons:

1st. This would be an assumption of the controverted question. The exemption of a non-resident from a tax *in personam* is due not to any rights of a non-resident, which he can waive, but to the want of power in the State; the question is the existence, not the operation of the power; there can be no subjection to a non-existing power, especially no implied subjection.

He can, of course, so subject himself, but only in one way, *i. e.*, by changing his status from non-resident to a resident, and thus bring himself within the class of subjects to which this power extends.

2d. The right of a State to tax its citizens or residents *in personam* exists by virtue or on account of their residence, not on account of any property holding; this alone is the basis or source of the power. If the holding of the property imposes on the non-resident this liability to personal

taxation, it imposes on him an obligation which it does not impose on a citizen or resident, and is a prohibited discrimination.

3d. While a State may, notwithstanding the constitutional guarantee prescribe a variety of conditions under which such privileges may be enjoyed by a non-resident, and require him to submit to a number of conditions under which its own citizens enjoy the same privileges, there is one condition or duty of the citizen or resident to which the non-resident is not obliged to submit, *i. e.*, his personal subjection to its sovereignty. This is the exact requirement which the constitutional provision was intended to prohibit; as the right is guaranteed to him as an alien and non-resident, *i. e.*, without this subjection to its sovereignty.

Pennoyer vs. Neff, 95 U. S. 733.
Paul vs. Virginia, 8 Wallace, 168, at 180.
Carfield vs. Coryell, 4 Wash. C. C. 380.
Slaughter-Houses Cases, 16 Wallace, page 30, at 76.

It is to be noted that this prohibition, to whatever extent it exists, applies to every exercise of the State's sovereignty whether by constitutional provision or by Act of the Legislature.

The above discussion has related merely to the existence of the State's power to so require personal subjection to its taxing power as a condition of enjoying rights to hold property. It is true, however, that even if it had the right, mere provisions for taxation in its constitution and statutes such as are here involved would not indicate an intention to exercise such power.

This was expressly decided in—

County vs. South Pac. R. R. Tax Cases, 15 Fed. Rep. 753, 754

A consideration of the possible limitations of or the occasion for such a power to tax non-residents *in personam* lead to the same conclusion.

Obviously the power to impose a tax *in personam* on the non-resident cannot be unlimited; this would totally disregard the distinction between residents and non-residents.

If, however, as to a given subject it exists at all, then "it is a right which in its nature knows no limits."

Weston vs. City, 2 Peters, 466.

While taxes *in rem* impose their own limitations, taxes *in personam* from their nature cannot; nor is limitation based on any principle possible.

If there can be a limitation it must be the value of his property. But this limitation itself shows the want of any occasion or necessity for the power over the person. The State has full jurisdiction over that on account of its location; to fully subject that to every lawful tribute no power to tax *in personam* is necessary. It can be "useful only for abuse." If the property is not of sufficient value to enable the State to realize the tribute which it exacts in return for its protection, that means that the power of taxation is really being used for the purpose of spoliation. If the property is so intangile and elusive, that no law can be devised to successfully seize it, that alone proves that it is too intangible and too clearly inseperable from the person of its owner to justify localization. Contentions about the limits of the tax power really only arise out of the attempts to tax property, properly subject to taxation elsewhere or already taxed in the same jurisdiction or entirely exempt.

While this Court cannot deny to a State a power simply because it is capable of abuse, still if the question of the existence or extent of a power is even doubtful the facts that it is useful or necessary only for abuse is always a material consideration.

II.

That the capital stock tax imposed by the revenue laws of the State of Maryland is a tax in personam on the stockholder, not a tax in rem on his shares.

The distinction between these two classes of taxes was recently discussed by this Court in Leigh vs. Green, 193 U. S. 79, at 90, 91. It is of special importance only as to non-resident stockholders.

In the character of its taxes Maryland differs from every State of the Union. In a recent treaties on taxation the taxes imposed by the different States are classified according to their character. A special class was provided for Maryland taxes alone.

27 Am. and Eng. Encyc. Law, 632.

The character of this tax is fixed by—

First. The express language of the statute as construed by the Court of Appeals of the State.

We concede that if a law imposing a tax should limit the power to enforce it to a sale of the property or contain similar limitations on its extent, that then any expressions in the Act descriptive of its character might be disregarded, not because the tax would be a valid tax *in personam*, but because, notwithstanding its form, it would in substance be a tax *in rem*.

On the other hand there can be no question that a State having the power to levy several classes of taxes may itself define the class to which a particular tax belongs. It is merely a question of whether the intention to so classify it is sufficiently clearly expressed.

That the State of Maryland has done this is our contention in this connection.

The statutory provisions relating to the taxation of shareholders are found in

Code, 1888 (re-codified 1903), Art. 81, Sects. 2, 90, 150, 151, 153, 159, 162.

They are too voluminous to be reproduced here as a whole. A statement of the substance or extracts of the essential portions are sufficient.

Of these, section 150 fixes the situs; sections 151 and 153 provide for annual reports to appropriate officials.

Section 2 provides: "All shares of stock in any corporation incorporated under the laws of this State shall be valued and assessed for State, county and municipal purposes to the owners in the county in which they reside."

Section 90 fixes the time for the payment of the tax and provides that they shall be paid by the corporations "whether they shall have declared dividends or earned profits or not."

Section 162 provides for the ascertainment of the taxable value of the shares and "that the taxable value of such shares * * * owned by residents of this State shall for county and municipal purposes be valued to the owner thereof in the county or city in which such owners shall reside and said taxable value of such shares as are held by non-residents shall be valued to the owners thereof in the county or city in which said bank or other corporation is situated; but all county and municipal taxes assessed upon the said taxable value of such shares shall be collected from such bank or corporation and when so paid shall be charged by such corporation to the accounts of such stockholders."

Section 159 makes the same provision as to State taxes, and also provides "That the shares shall be valued at their actual cash value; but in no case shall the stock of any corporation in the aggregate be valued at less than the full value of the real estate, chattels real or personal belonging to the corporation in the State."

In other portions of the article, relating to annual reports, penalties of officers, etc., the tax is indiscriminately referred

to as a tax on shares or on shareholders. A discussion of the language of the statute can serve no useful purpose. The one thing that can with certainty be said is that it does not clearly fix the character of the tax. While if the question were one of first impression the tax might with almost equal reason be held to be a tax on the corporation or on its shares or on its shareholders, the Court of Appeals has by repeated decisions, in language too clear to be mistaken or admit of doubt, fixed the character of the tax, as a tax, purely *in personam*.

Article 15 of the Declaration of Rights of Maryland provides that—

> "Every person within the State or holding property therein ought to contribute his proportion for the support of the government, according to his actual worth in real and personal property."

This differs from the definition of the general sovereign power of taxation. It confines the taxing power to one subject, *i. e.*, person; it eliminates one authorized subject and makes an unauthorized extension of power as to the other. It has been so construed by the Court of Appeals in the following cases:

> Monticello Co. vs. Baltimore City, (1900), 90 Md. 416, at 425-6.

By the Act of 1892, chapter 704, distilled spirits in bond were made subject to general taxation. In disposing of the contention that the tax was on property and as such void, the Court said, (page 425):

> "Taxes of the kind here dealt with" (annual taxes on personal property) "are, under Article 15 of our Declaration of Rights, levied *not* on *things*, but on the *owner* of things, and the value of things owned fixes the measure of the owner's liability to contribute in taxes towards the support of the government. This is an axiom of political economy no less than a fundamental provision of

our organic law. (U. S. Elec. Power Co. vs. State, 79 Md. 63.) It cannot, therefore, be assumed that the Legislature deliberately intended to disregard this principle and to place the tax on spirits and not on the owners of them." The Court then quoted the provision of the Declaration of Rights above stated and continued: "It is the *individual* then who is in the State or holds property therein that is liable to taxation. He may be out of the State, he may be a non-resident, but if he has property situate here he is as much bound to contribute to the support of the government, according to the value of that property, as though he were permanently domiciled within the limits of the commonwealth. Whatever the language of the statute may be it must bend to this paramount law. * * * Though the language employed like that used in many of the other assessment laws if read literally would indicate an intention to impose the tax on property and not the owner of it; that is not its meaning when considered in connection with the settled policy of Maryland as announced in the Declaration of Rights. We hold then that the tax is upon the owner of the spirits and not specifically upon the spirits."

In Carstairs vs. Cochran, 95 Md. 495, pages 500, 501, (affirmed on another point by this Court, 193 U. S. 10), the Court of Appeals repeated and expressly approved the language of the above quotation.

Prior to the above decision the character of the tax imposed by the above statute has been decided by the same Court, simply as a question of the construction of the statutory provisions without reference to the provision of the Declaration of Rights.

Tax Cases, 12 G. & J. 117.

Approved in Appeal Tax Court vs. Patterson, 50 Md. 354, at 368.

"Non-residents of the State are liable to the tax in respect of stock held in the banks of this State as well as residents."

U. S. Elec. L. & P. Co. vs. State, 79 Md. 63.

In addition to the regular tax on its stockholders the State had imposed on the company a gross receipt or franchise tax. It was contended that the general tax was a tax on the stock, of which the franchise was the substantial element of value; that the franchise tax was an indirect attempt to impose a double tax. The Court held (page 70):

> "The tax upon the shareholders is not a tax upon the *stock* or upon the *corporation*, but upon the *owners* of the shares of stock, though the officers of the corporation are made agents of the State for the collection of the tax. The shares belong to the stockholders respectively and individually, and when for the sake of convenience in the collection of the tax the corporation pays the tax upon these shares into the State Treasury, it pays the tax not upon the company's own property, nor for the company, but upon the property of each shareholder and for each shareholder by whom the company is entitled to be reimbursed. * * * Hence, when the owner of the shares is taxed on account of his ownership and the tax paid for him by the company the tax is not levied upon or collected from the corporation."

It will be noted that this case is cited in the Monticello case *(supra)* as involving the same question there presented and authority for its decision.

The above quotation was repeated and approved in—

Crown Cork & Seal Co. vs. State, 87 Md. 696.

To the same effect are

Clark Dist. Co. vs. Cumberland, 95 Md. 469, at 477.

Hull vs. Southern Devel. Co., 89 Md. 8, at 10 and 11.
Donovan vs. Ins. Co., 30 Md. 155.
American Coal Co. vs. Co. Comars. 59 Md. 185.

The latter might not alone be sufficient to fix the character of the tax. In some and in other cases not cited the terms, tax on shares and tax on shareholders, are indiscriminately used. A distinction between the two was not required by the facts. The question involved and decided was that the tax was not on the corporation or its property. The actual distinction between the two was, we submit, required and drawn by the cases from which the quotations are made.

The character of the tax is also shown by—

Second. The method of ascertaining the value of the shares or the basis of the tax.

The statute after directing (article 81, sections 162, 159) that the shares shall be valued at their real value, taking into consideration the total value of the company's property, provides further:

> "But in no case shall the stock of any corporation be valued in the aggregate at less than the full value of the real estate, chattels real and personal belonging to the corporation in the State."

This proviso is, in fact, and forms in practice, the whole rule for valuation; it is a prohibition against deducting from the aggregate value of the company's property, the amount of its debts. It provides for a distinction between real or actual value, and assessable value. In a real valuation there are but two elements; one, the aggregate value of the company's property; the other, the amount of its debts. This proviso eliminates one. Both of the elements are equally necessary in a real rule for valuation; as much so as in a problem of subtraction. The one eliminated forms the only distinction between the value of the company's property and

of its shares. It is a real rule for valuation only when applied to a corporation which has no debts; that class of corporations scarcely exists.

An illustration of the application of this rule to the large number of local manufacturing or merchandising corporations is instructive. Suppose a corporation has

Machinery, merchandise, etc., valued at		$2,000,000
Bond issue or debts of.....	$1,000,000	
Capital stock.....	1,000,000	
		$2,000,000
The real value of the stock would be, par.....		$1,000,000
The assessable value would be		$2,000,000

Nor is this all. If the $1,000,000 in bonds are in the hands of residents, they are also subject to taxation and the corporation is required to deduct the tax from the interest.

Code, 1888, Revis. 1903, Art. 81, Secs. 94, 214.

That the tax on the whole property should be paid is immaterial. The obligation of the non-resident to contribute to the support of a State arises out of his property; it is a tribute exacted in return for the State's protection. The stockholders' interest in the State is limited to the real value, not the assessable value of his stock. The total withdrawal of the State's protection could inflict on him no loss in excess of this real value. The protection and tribute are reciprocal duties. As this value limits the extent of the protection it should equally impose a limitation on the tribute.

This rule for ascertaining value can, we submit, be accurately described by but the single phrase, purely arbitrary. Our illustration above given is fairly typical; but whether it is or not is quite immaterial. Disregard of the statutory rule by the Tax Commissioner, skill of the corporate returning officers at evasion or suppression, or accidental situations in the corporation's affairs, may reduce the difference

between the real and assessable valuation. Two things only are certain—*i. e.*, that except in the case of a corporation having no debts, the value ascertained under the statutory rule can never be correct; this rule, moreover, limits the minimum; it must, therefore, err on the side of excess.

In Bank vs. Commonwealth, 9 Wall. 353, the tax assailed was a fixed rate on the shares at par. It was contended that this was a tax on the bank itself. This Court, page 360, said that the mere fact that the assessment or basis of the tax had no real relation to the amount of the bank's assets was itself sufficient to show that it was not a tax on the bank. So we here contend that there is absolutely no relation between the actual and assessed value of the shares conclusively shows that the tax is not on the shares.

Third. The character of the obligation imposed furnishes another index of the character of the tax.

(*a*) The obligation to pay is imposed on the corporation; this, however, is not an obligation as tax payer, but as tax collector; the primary tax obligation is on the shareholder.

Hull vs. Southern Del. Co., 89 Md. 8, at 10, 11.
U. S. Electric Light and Power Co. vs. State, 79 Md. 63, at 70.
Casualty Insurance Co. Case, 82 Md. 535, at 563, 564.

The shareholder is however required to refund to the corporation the tax so paid. Article 8, section 162, provides: "And when so paid shall be charged to the account of such stockholder." (By the Act of 1902, Ch. 468, the wording is changed to "shall or may." While this is not material as to whether the tax is on the stock or stockholder, it may be noted that this Act was passed after the tax sought to be enjoined was levied.)

"The Company pays the tax * * * for each stockholder respectively by whom it is entitled to be reimbursed."

U. S. Elec. Light & P. Co. vs. State, 79 Md. 63, at 70.

Hull vs. South. Dev. Co. 89 Md. 8 at, 10, 11.

The tax then imposes first a tax obligation on the shareholder to pay, then on the company to collect and pay over, and when so paid an obligation on the shareholder to the company. The obligation of the shareholder to the company is necessarily identical in extent with that of the corporation to the State; any lesser obligation could not provide a reimbursement, and it would, as to the difference or excess, amount to a tax on the company.

(*b*) The obligations are in no way restricted in extent to dividends or to the stock. Thus, article 81, section 89, expressly provides that the tax shall be paid by the corporations "whether they shall have declared dividends or earned profits or not."

In Houston vs. New Orleans, 119 U. S. 265, at 276, 279, this Court held that this identical provision was sufficient to show that the tax was not a tax on shares.

The taxes are not even restricted to the value of the stock; it is not even necessary that the stock really exist; the company may be wholly insolvent, still the artificial valuation must be made and the tax paid. This exact situation existed in

Casualty Insurance Co.'s Case, 82 Md. 535 at 563, 564.

And in deciding that the tax was not only payable, but payable as a prefered claim, the Court said, pages 562-4:

> "These taxes cannot, of course, be considered a debt due by the company unless they are made so by statute, because the shares of stock are the property of the shareholder, and under the Code must be valued to

him." The Court then discusses and decides that the company is liable as a collector, and continues: "If these taxes are a debt due by the corporation they are a debt due by it to be paid regardless of any dividends or profits out of which it might be reimbursed. Though this is conceded to be so while the company is a going concern, the contention is that when the company becomes insolvent and its property has passed into the hands of a receiver such taxes cannot be held to be a debt of the corporation for which its assets are liable. In reply to this it may be observed that the tax is, by the express terms of the statute, charged to and made payable by the corporation."

In Stapleton vs. Haggard, 91 Fed. Rep. 93, 95 (Circuit Court of Appeals, 5th Ct.), it was decided that if the tax be really one on the shares it is not recoverable in the event of the company's insolvency. This is necessarily correct where the tax is really on shares.

(c) The tax is, moreover, recoverable in assumpsit. This if there were no other would be a sufficient index to the character of the tax obligation.

In Maryland all taxes are so recoverable.

"The imposition and assessment of the tax creates a legal obligation on which the law raises an implied assumpsit." When ~~after~~ new or summary remedies are provided they are merely cumulative.

Dugan vs. Mayor and C. C. of Baltimore, 1 G. & J. 499, at 502-3.

Mayor, etc. vs. Howard, 6 H. & J. 383, at 394.

This rule has been made expressly to apply to the stock taxes imposed by the provision of the Code under discussion.

Hull vs. Southern Dev. Co. 89 Md. 8, at 11.

Casualty Ins. Co. Case, 82 Md. 535, at 564.

American Coal Co. vs. County Commissioners, 59 Md. 185, at 197.

No other remedy, such as a proceeding for seizure and sale of shares is provided.

(e) This tax it is to be noted is not a tax on the corporation itself.

While the considerations above discussed show that the tax cannot be a tax *in rem.* on the shares, some of them tend to show it to be a tax on the corporation; and in the case of Houston vs. New Orleans, 119 U. S. 265, the tax, for the reason cited, and for an additional reason (pages 278-9), so declared. As to such a tax some of the considerations discussed would not be objections. If such were the character of the tax it would exclude from the valuation and assessment property already taxed elsewhere, such as real estate in another State; property already taxed in this State or exempt by its contract, such as the State's own bonds, or universally exempt, such as bonds of the United States, all of which under the revenue law as construed by the Court of Appeals can be and are included in the valuation of the shares. The State may, therefore, prefer to avoid the limitation of such a tax. This Maryland has done.

Whether or not, however, this statute does provide a tax on the corporation is a mere question of construction. Upon this the decision of the Court of Appeals is final. That the tax is not on the corporation is a question free even from doubt.

Donovan vs. Ins. Co., 30 Md. 155, 160.

Hull vs. South Dev. Co., 89 Md. 8, at 10, 11, *supra.*

U. S. Elec. L. & P. Co. vs. State, 79 Md., 63, at 70, *supra.*

Crown Cork & Seal Co. vs. State, 87 Md. 696.

Clark Distill. Co. vs. Cumberland, 95 Md. 468, at 476-7, *supra.*

We submit, therefore, that the tax is on the stockholder *in personam*, quite as much as if the Legislature had added

another section to Article 81, reading as follows: Provided, however, that as the State can levy taxes "not on things but on the owners of things," (Monticello vs. Baltimore), the tax above imposed is "not a tax on the corporation nor upon its stock, but on the owner of shares of stock," (U. S. Elec. L. & P. Co. vs. State), and shall be assessed on a valuation of shares having no relation to their real value, (except to always exceed it), and shall be paid even if for a single year it exceeds the value of the shares, (Casualty Co's case), and be recoverable from the shareholder in assumpsit, (Hull vs. South. Dev. Co.)

III.

That the tax is levied without due process of law and is therefore in conflict with the Fourteenth Amendment to the Constitution.

In the consideration of this contention the residence of the shareholders and character of the tax are immaterial.

The State makes no provision for notice or opportunity to be heard to the stockholders. It provides for a return by the officers of the corporation to the State Tax Commissioner (section 163); for the valuation by him (sections 151, 159, 162); for notice to the corporation of the assessment and an appeal by it (section 165); but no appeal or hearing at the instance of the stockholders is provided for, although the tax is upon them or their shares and not on the corporation. The validity of the assessment depends on the sufficiency of the notice thus provided for.

The tax assailed is a general tax.

Just what due process of law is, in a given proceeding, depends so much on its character and object that an extended examination of all the cases in which the term has been defined can serve no useful purpose.

The Court has recently said:

> "Exactly what due process requires in an assessment of a general tax has never been decided by this Court."
>
> Turpin vs. Lemon, 187 U. S. 51.
> Glidden vs. Harrington, 189 U. S. 255.

In Cooley on Taxation, pages 363-4, the requirements are in general terms stated as follows:

> "Tax proceedings are not in the strict sense judicial. But they are *quasi* judicial, and as they have the effect of a judgment the reasons which require notice on judicial proceedings are always present when the conclusive steps are to be taken. Provision for notice is therefore part of the 'due process of law' which it has been customary to provide for these summary proceedings, and it is not to be lightly assumed that constitutional provisions carefully framed for the protection of property rights were intended or could be intended to sanction legislation under which officers might secretly assess the citizen for any amount in their discretion without giving him any opportunity to contest the justice of the assessment. It has often been very pointedly and emphatically declared that it is contrary to the first principles of justice that one should be condemned unheard, and it has also been justly observed of taxing officers that 'it would be a dangerous precedent to hold that any absolute power resides in them to tax as they may chose without giving any notice to the owner. It is a power liable to great abuse.' And it might safely been added that it is a power that under such circumstances would be certain to be abused. The general principles of law applicable to such tribunals oppose the exercise of any such power."
>
> Cooley on Taxation, pages 363, 364.

Mr. Justice Field, in delivering his great judgment in the Railroad Tax Cases, 13 Fed. Rep. 752, said:

> "But in the taking of property by taxation, the proceeding is more summary and stringent. The necessities of revenue for the support of government will not admit of the delays attendant upon judicial proceedings in the Courts of justice. The statute fixes the rate of taxation upon the value of the property and appoints

officers to estimate and appraise the value. Due process of law in the proceeding is deemed to be pursued when, after the assessment is made by the assessing officers upon such information as they may obtain, the owner is allowed a reasonable opportunity, at a time and place to be designated, to be heard respecting the correctness of the assessment and to show any errors in the valuation committed by the officers. Notice to him will be deemed sufficient if the time and place of hearing be designated by statute. But whatever the character of the proceeding, whether judicial or administrative, summary or protracted, and whether it takes property directly or creates a charge or liability which may be the basis of taking it, the law directing the proceeding must provide for some kind of notice and offer to the owner an opportunity to be heard or the proceeding will want the essential ingredient of due process of law."

While this Court has declined to fix these requirements by definition yet by the process of "judicial inclusion and exclusion" the following requirements have been established for due process of law in an assessment for general taxation.

Some opportunity must be afforded the owner to question the validity or amonnt of the assessment.

The notice need not be personal, but it may be by publication, or a statute may give notice by fixing the time and place of hearing.

Winona & St. Peter L. Co. vs. Minnesota, 159 U. S. 526, at 536.
Merchants Bank vs. Pa., 167 U. S. 461, at 466.
Pittsburg Ry. vs. Backus, 154 U. S. 421, at 425.

The time and place for hearing must be in some way prescribed.

Railroad Tax Cases, 92 U. S. 575, at 610.
Plamer vs. McMahon, 133 U. S. 669.
Hagar vs. Reclam. Dist., 111 U. S. 701, 710.
See also—Monticello Co. vs. Balto., 90 Md. 416, at 428.

We submit that the proceedings in question are not within these requirements:

1st. The assessment of shareholders is not embraced in the general assessment law. The provisions for hearing and notice provided for in the general assessment law of property are not applicable to the assessment of the shareholders. This assessment is the subject of the special proceeding before the State Tax Commissioner. His decision (subject only to the appeal provided for to the treasurer and comptroller) is final. It is not subject to be controlled by the Courts even in case of mistake.

Salisbury Bldg. Assn. vs. Wicomico Co., 86 Md. 615, 621, 622.

Clark Distilling Co. vs. Cumberland, 95 Md. 468, at 474, 475.

2d. There are two steps in the assessment under this special proceeding—the original assessment and appeal. At neither is an opportunity to be heard accorded to the stockholder.

(*a*) *The Assessment.* By Article 81, section 153, the corporate officers are required to make a return of the value of the shares on or before March 15 of each year, and the State Tax Commissioner is required to assess them on or before May 15th. Section 151 authorizes him to examine under oath any officer of the company or any other witness.

It is manifest that no hearing on this original assessment is even contemplated. The corporation may make its return on any day between January 1st and March 15th. The commissioner may make the assessment immediately on the day of the return or on any day prior to the 15th day of May. No time is provided during which such return shall remain in his office subject to inspection. No publication of any notice is required. Whom he shall hear or whether he shall hear at all is left to his dircretion by section 151. Only on one theory could these sections be held to afford an

opportunity to stockholders to be heard, *i. e.*, that the office being a public one, any citizen has a right to enter and ascertain whether the return has been made. If this were true no question of due process of law in any proceeding could arise. The question can only arise as to proceedings of a State, *i. e.*, public proceedings conducted by public authority. To all such proceedings any citizen has as much unrestricted access as to this. Such mere right of access cannot therefore afford the opportunity and notice required.

Some form of notice of the time is equally required. This may be prescribed by statute, but some degree of certainty is required. As the corporation may make its return on January 2, and the Commissioner make his assessment at once, or at any time up to May 15. Only constant attendance for five and one-half months would assure an opportunity to be heard before the assessment is made. As this attendance would be the right equally of the thousands of stockholders of all the corporations of the State the mere physical limitation of space would make such an opportunity illusory. It is manifest therefore that no hearing before assessment, other than the corporate return, was contemplated.

In construing a statute almost identical, Act 1892, chap. 704, providing for the return to and assessment of spirits by the same officer, the Court of Appeals so held.

Monticello Co. vs. Baltimore City, 90 Md. 416, 428.

> "It (this act) does not authorize the Commissioner to accord any hearing at all, and in this particular differs verbally from the Pennsylvania statute under review in
>
> Merch. & M. Bk. vs. Penna., 167 U. S. 461;
> R. R. Tax Cases, 13 Fed. Rep. 750."

(*b*) *The Appeal.* By Art. 81, Sec. 165, the Commissioner is directed to send by mail to the corporation a notice of the assessment when made. The corporation is given a right of appeal to the Commissioner, the treasurer and comptroller;

the right of appeal exists only where actually provided for, and it is here restricted to the corporation. Even if it be assumed that the stockholder had the right to appear at the hearing this would be illusory since the corporation has control of the appeal and can dismiss it absolutely or conditionally to effect a compromise. No possible construction of this right of appeal by the corporation could deny to the majority of the stockholders the right through the corporation to control it. This right would leave the affirmance of change of the Commissioner's ruling not to the three public officers, but to the majority stockholders.

As the time for the appeal is determined by the assessment; and the hearing may be at once or not, the time for hearing the appeal is as uncertain as that of the assessment.

3d. If any notice or opportunity is provided by the statute to the stockholders it can only be on the theory that the notice to corporation is notice to the stockholders.

The Court of Appeals has so decided.

Clark Distill. Co. vs. Cumberland, 95 Md. 468, at 475.

But the question of what constitutes an opportunity to be heard, or due process of law; the elements of such opportunity or due process, are federal questions on which the Supreme Court would not consider the decision of the State Court conclusive.

State Bank vs. Knoop, 16 How. 391.
Wright vs. Nagle, 101 U. S. 793, 794.
McCullough vs. Virginia, 172 U. S. 109, 110.

We submit that the ruling of the State Court was not correct.

It is to be borne in mind that the entire basis of all systems of taxation of shares of shareholders, is the distinction between the corporation and the shares of stock or the

stockholders as such. Their effectiveness and validity depend on this consideration alone. No State has carried the distinction further or enlarged its powers and increased its revenue more on account of it than Maryland. There can be no reason for considering the corporation and shareholder separate and distinct for purposes of extending taxation and identical for purposes dispensing with notice. The stockholder is obliged to pay tribute, the State to give notice. The right of the tribute is dependent upon the notice. It cannot be that for the purposes of imposing on the stockholders the obligation to pay, the two are distinct, for depriving him of notice they are identical.

We do not, of course, deny that the State may provide for notice of any assessment on the local agent of a non-resident owner. But there must be a real agency. The one relation which it has been uniformly held does not exist between the corporation and stockholders, or *vice versa*, or among the stockholders, is that of principal and agent, especially with respect to the separate individual interests represented by the shares.

Cook on Corporations, Sec. 11.

In this State, moreover, and for tax purposes, the corporation is the agent of the State, not of the stockholder.

Thus in Hull vs. Southern Development Company, 89 Md., 8, at 10, the Court said:

> "The corporation is for the sake of convenience made the agent of the State and county to collect." (Page 11.) "It is the State's tax collector."

See, also, cases *supra*.

That the State can, for the purpose of creating a debt by statute, make its own agent and collector the agent of the intended non-resident debtor to admit service and notice is, we submit, inconceivable. As well might it make its treasurer, or any of its other agents or tax collectors, the agent

of the tax payer for the sake of the convenience of dispensing with notice, or avoiding nice constitutional questions. It would be a vast advance in substituted service.

If this power of creating agencies exists, it is difficult to find a limitation which would prevent its use to subvert fundamental principles.

In Merchants N. B. vs. Penna., 167 U. S. 461, the validity of a statute providing for a system of taxation of shares very similar to the Maryland statute was assailed. In stating and disposing of the objection, this Court said (page 466):

> "A final objection is that there is a lack of due process of law, in that the property of the shareholders is subjected to an ad valorem tax, without an opportunity given to them to be heard as to value. It is true that the statute contemplates no personal notice to the shareholder, but that he has never been considered as essential to due process of law in taxation. The statute defines the time when the bank shall make its report to the auditor-general, and it specifically *directs* him to hear all *stockholders* who may desire to be heard."

This fixing the time for the report by the corporation and the opportunity to the stockholders to be heard are the two things which in the opinion of the Court prevented it from being invalid. These are just the provisions not contained in the Act in question and which distinguish it from a valid tax. In this case, moreover, the tax is a personal tax, while in that case it was *in rem* on the shares. This is an additional reason for requiring that the opportunity to be heard be given to the stockholder.

IV.

That the Whole Tax is a Mere Nullity.

1st. If our contentions under Nos. I and II are correct then the Act of the Maryland Assembly imposes a per-

sonal obligation on a non-resident person, and imposes only that; it is, therefore, wholly *ultru vires* and void.

If the State has, because of self-imposed limitations of the Declaration of Rights no power to levy a tax *in rem* and no power to impose a tax *in personam*, because the person is out of the jurisdiction, then the law is necessarily void. The question of extent cannot arise; to discuss the extent of a non-existing obligation is a misuse of words.

The corporation cannot, therefore, be compelled, and has no right to apply the plaintiff's property towards the payment of a void obligation any more than the plaintiff himself can be compelled to pay it, nor can it obtain a lien on its property or shares by such payment.

This is not a case in which a tax or assessment is imposed first *in rem*, on property with the provision for a personal obligation of the owner as to any deficit or excess. The situation is exactly the converse. The personal obligation of the shareholder is the basis of every right or remedy for the tax. If the obligation is void, no remedy or right to enforce it can exist.

In other jurisdictions the first tax *in rem* might be valid and the excess void. In this State, however, by reason of the self-imposed limitations of the Bill of Rights, even a tax *in rem* would be void. Such twofold tax is, as we have undertaken to show, not the tax imposed or provided for.

That the above contention is correct is the necessary result of the authorities by which the first contention is supported and the character of that contention.

This exact point was moreover decided in—

Pennoyer vs. Neff, 95 U. S. page 714.

The State of Oregon had undertaken to provide for the collection of debts due by resident property holders to its citizens. The proceedings did not begin, however, with attachment or seizure of the property. They provided for a personal judgment against the non-resident. Under such a

judgment property situate in Oregon was seized and sold. Whether a valid title passed was then raised by an action of ejectment.

This Court held that the judgment and seizure were absolutely void even as to the local property. The exact question decided is shown by its statement, by Mr. Justice Field, page 727:

> "The want of authority of tribunals of a State to adjudicate upon obligations of non-residents when they have no property within its limits is not denied by the Court below, but the position is assumed that where they have property within the State is immaterial whether the property is in the first instance brought under the control of the Court by an attachment or other equivalent Act, and afterwards applied by its judgment to the satisfaction of demands against its owner or such demands be first established in a personal action, and the property of the non-resident be seized and sold on execution."

The Court held that such a contention was unsound and the judgment wholly void. See also fifth point in dissenting opinion, Mr. Justice Hunt, page 737.

We here respectfully direct attention to the fact that the injunction prayed for is to restrain the enforcement of payment by the corporation, because on such payment an unconditional personal obligation to refund will be imposed on the plaintiff—*i. e.*, the injunction is asked to restrain the creation of the personal obligation from the plaintiff to the corporation.

2d. If the statute does not provide for any due process of law as contended for in our III contention, then clearly the whole tax is necessarily void.

Under, therefore, either the I or II, or under the III contention, the tax is a mere nullity.

V.

The State and Federal Questions Involved.

That a federal question is involved is, we believe, conceded.

In the argument, especially the portion relating to the character of the tax imposed, portions of some decisions were relied on as authorities, the correctness of other portions denied. This is due to the difference in character of the questions involved.

The question of the kind and extent of the power the State is attempting to excercise, *i. e.*, the kind of the tax actually imposed by the revenue laws, whether it is on the corporation, the shareholder or the shares, are questions of the construction of the Maryland Bill of Rights and statutes. On these questions the decisions of the Court of Appeals are conclusive; it is as to these the Court of last resort.

Cleveland Tr. Co. vs. Landers, 184 U. S. 111.

Whether the State has the right to exercise the powers; or whether the exercise is *ultra vires*; whether it has the power to so tax a non-resident; whether the tribute exacted by its revenue laws is taxation or spoliation, is a federal question.

Dewey vs. Des Moines, 173 U. S. 193, 201.
Louisville Ferry Co. vs. Kentucky, 188 U. S. 385.
Fargo vs. Hart, 193 U. S. 490.
State Tax on Foreign held Bonds, 15 Wall. 300.
County of Santa Clara vs. Southern Pac. R. R., 18 Fed. Rep. 385, 392, 398-9, 407.

VI.

Propriety of the Remedy by Injunction.

The right of this remedy ~~is~~ not seriously questioned below.

The following considerations determine the question for the plaintiff:

1. The case presented is not that of a tax valid in part, excessive valuation or mere irregularity in assessment, but of a tax wholly *ultra vires, i. e.* on a subject not taxable by the State—a tax therefore which is mere spoliation and a nullity.

2. The tax purported to impose a lien on the shares, which lien would cloud the title and prevent a sale.

3. In Maryland, payments of taxes, even under protest, are voluntary and not recoverable.

Baltimore vs. Hussey, 67 Md. 116.
Baltimore vs. Lefferman, 4 Gill, 431.
Lester vs. Baltimore, 29 Md., 418.

4. The remedy is the appropriate one under the law of the State. There can, under these circumstances, manifestly be no adequate remedy at law in such a case and no other remedy could have been adopted by the plaintiff.

In County Commissioners vs. Union Mining Co., 61 Md. 545, at 545, the right to injunction was thus stated by the Court (Record, page 548):

> "It is only when the tax itself is clearly illegal or the tribunal imposing it has clearly exceeded its powers or the rights of tax payers have been violated, that the interposition of the special remedy by injunction can be successfully invoked."

Allegheny Co. vs. N. Y. Mining Co., 76 Md. 549, 554.

The remedy is peculiarly applicable to void taxation of shares of stock in cases in which payment by the corporation for the shareholders is required. This requires the distribution by it among all the cities or counties of a State. Any other remedy would require suits in each county involving the same question. The corporation's position in these

cases is that of stockholder or trustee for division and distribution, and the control of the discharge of its duties as such is peculiarly within the province of a Court of Equity.

Injunctions to restrain the taxation of shares, under statutes similar to the Maryland statute, were sustained by this Court in—

Cummings vs. Natl. Bank, 101 U. S. 153, 157.
Hills vs. Exchange Bank, 105 U. S. 319, 321.

Attacks on the validity of the tax laws on the ground that they were nullities though unsuccessful in the following cases that the proceeding was proper was not questioned by the Court.

Delaware Tax Case, 18 Wall. 206.
Adams Express Co. vs. Ohio State Auditor, 165 U. S. 194.
Savings Soc. vs. Multnomah Co., 169 U. S. 421.

In some cases a tender of the amount of the tax equitably due is a prerequisite of the right to injunction. Recent cases clearly defining the extent of this rule are:

People's Bank vs. Marye, 191 U. S. 272.
Fargo vs. Hart, 193 U. S. 490, at 502, 503.

In the latter case the Court said:

> "If there was no right to assess the particular thing at all and the assessments under such circumstances would be void, of course no payment or tender of any amount would be necessary before seeking the injunction."

This is the exact case presented here—*i. e.*, the taxation of a subject not within the power.

WILLIAM P. MAULSBY,
EDWIN G. BAETJER,
For Plaintiff in Error.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1904. No. 86.

JAMES C. CORRY, *Plaintiff in Error,*

vs.

THE MAYOR AND CITY COUNCIL OF BALTIMORE ET AL., *Defendants in Error.*

IN ERROR TO THE COURT OF APPEALS TO THE STATE OF MARYLAND.

Brief on Behalf of the Mayor and City Council of Baltimore and James P. Gorter, City Collector.

This case involves the validity *vel non* of the Maryland Statute taxing non-resident stockholders of Maryland corporations at the place in Maryland where such corporations have their principal office.

Statement of the Case.

James C. Corry, the plaintiff in error, is a resident and citizen of the State of Pennsylvania, and a stockholder in the New York and Baltimore Transportation Line. This company was incorporated by Chapter 112 of the Acts of the General Assembly of Maryland passed in the year 1847.

The laws of Maryland provide that for purposes of assessment and taxation, the situs of shares of stock held by non-

residents of Maryland in Maryland corporations shall be the place in Maryland, where such corporations have their principal office, and that such shares of stock shall be there valued and assessed to the non-resident owners thereof. The taxes themselves are collected from the corporation, but when so paid they may be charged by the corporation to the account of the individual stockholders. In the case of non-resident stockholders, the tax is made a lien on the stock until paid. (See part I, post, where the Maryland statutes are reveiwed.)

The capital stock of the New York and Baltimore Transportation Line was duly valued and assessed for purposes of taxation for the years 1899 and 1900, at $14.97 per share. The Company being a corporation of Maryland, having its principal office in Baltimore city, and the plaintiff in error being a non-resident of Maryland, the shares of stock belonging to the plaintiff in error were duly valued and assessed to him in the city of Baltimore, and payment of the taxes levied thereon was duly demanded of the New York and Baltimore Transportation Line, by the proper State and city officials (Bill of Complaint, paragraph VI, Record, page 3.)

The corporation was about to comply with said demands, (bill of complaint, paragraph VII, Record, page 3,) when, on September 20, 1900, the plaintiff in error filed his bill of complaint in the Circuit Court No. 2 of Baltimore City against the Mayor and City Council of Baltimore, James P. Gorter, City Collector, Murray Vandiver, State Treasurer, and the New York and Baltimore Transportation Line, the defendants in error. The bill alleged that the Maryland statutes providing for the taxation of non-resident stockholders in Maryland corporations on account of their stock, operated to deprive such stockholders of their property without due process of law and in contravention of the Constitution of the United States, and the Fourteenth Amendment thereto. The bill prayed for an injunction to restrain the City of Baltimore, the City Collector and the State Treasurer from

collecting the said taxes, and to restrain the corporation from paying said taxes to the State and City officials.

The bill was filed on the theory that the corporation, by paying the said taxes, which it was alleged to be about to do, would place itself in the position of a creditor of the plaintiff in error, and would thus make the plaintiff in error a debtor of said corporation, without his consent and against his will. (Bill of Complaint, paragraph VII, Record, pages 3 and 4.)

The several defendants duly filed answers to the bill of complaint (Record pages 8 to 13), and the plaintiff in error then filed a general replication (Record page 13); an order was subsequently passed granting leave to take testimony, (Record page 13); but before any testimony was taken, it was agreed by counsel for all the parties, that the several answers filed in the cause should be withdrawn, and that demurrers to the bill of complaint should be considered as filed under proper affidavits by each of the defendants. (Record, page 15.)

On June 24, 1902, the Circuit Court No. 2 of Baltimore City, after argument, passed an order sustaining the demurrer to the bill of complaint and dismissing the bill. (Record, page 15.)

On July 25, 1902, the plaintiff in error entered an appeal from this order or decree to the Court of Appeals of Maryland (Record, page 16), and on January 16, 1903, the Court of Appeals of Maryland, after argument, affirmed the judgment of the lower Court. (Record, page 16.) The opinion of the Court of Appeals of Maryland is set forth on pages 17 to 20 of the Record.

On July 1, 1903, the plaintiff in error prayed for the allowance of a writ of error to the Supreme Court of the United States (Record, page 21), which writ of error was duly allowed (Record, pages 22 and 23). The assignments of error are set forth on page 24 of the Record.

The grounds upon which the Maryland statutes in question are alleged in this Court to be unconstitutional, are two:

1. That the Maryland statutes, providing for the taxation of non-resident stockholders on account of the shares of stock owned by them in Maryland corporations, impose a tax, not upon the corporation, nor upon any property in Maryland, but upon the person of the non-resident stockholder, and that this constitutes an attempt to take property without due process of law.

2. That the statute laws of Maryland contain no provision for notice or opportunity to be heard to the individual stockholders before determining the value of the shares of stock upon which taxes are to be imposed.

In answer to the first of these contentions, these defendants in error submit, that the State of Maryland has full power to fix the *situs* of the shares of stock held by non-residents in Maryland corporations at the place in Maryland where such corporations have their principal office, and to provide for the taxation in Maryland of such non-resident stockholders on account of their stock, without in any way violating the constitutional provision that no person shall be deprived of his property without due process of law. (See part III, post.)

In answer to the second ground upon which the Maryland statute is attacked, these defendants in error contend, that although the laws of Maryland may make no provision for notice to the stockholders, or for any opportunity to be heard by them, upon the question of the valuation of their stock for purposes of taxation, yet ample provision is made for notice to, and an opportunity to be heard by, the corporation itself; and that inasmuch as the corporation, under the Maryland system of taxation, is the agent and representative of the stockholders in these matters, the Maryland law gratifies all the requirements of the Federal Constitution. (See Part IV, post.)

In connection with this latter point, we will also contend that equity has no jurisdiction to enjoin the collection of taxes which the State has the power to impose, merely because the law imposing them fails to provide for notice or an opportunity to be heard. (See Part V, post.)

PART I.

Maryland Statutes.

For the convenience of the Court we will first give a brief explanation of the Maryland system of taxing shares of stock and a brief summary of the Maryland statutes providing for such taxation. These statutes are codified in Article 81 of the Code of Public General Laws of Maryland of 1902. They are the statutes contained in Article 81 of the Code of Maryland of 1888, as amended by subsequent legislation.

Article 81, Section 2, of the Code of 1902 (Code, 1888, Article 81, Section 2, as amended by Acts of 1896, Ch. 120, and Ch. 143), provides for the taxation of all *real estate* situated in Maryland and belonging to corporations doing business therein, as the property of such corporations, and for the taxation in Maryland of shares of stock owned by *residents* of Maryland in both domestic and foreign corporations.

Section 90 of Article 81 of the Code of 1902 (Code, 1888, Article 81, Section 84) provides for the payment by all corporations doing business in Maryland of the State tax imposed upon the shares of capital stock of such corporations "without regard to the place of residence of stockholders."

This provision, requiring the payment of taxes on shares of stock "without regard to the place of residence of stockholders," was first enacted in Chapter 289 of the Acts of 1843.

Section 96 of Article 81 of the Code of 1902 (Acts 1890, Ch. 244) imposes a penalty in case of the failure of any corporation to pay, within the time limited in said section,

the State taxes levied on its capital stock; recovery of such penalty and taxes to be enforced by suit against the corporation in the manner provided in Sections 97 to 100.

Section 150 of Article 81 of the Code of 1902 (Code 1888, Article 81, Section 131), entitled "Assessment of corporate stock owned by non-residents," provides as follows:

> "For the purpose of valuing the stock of banking and other private corporations held by non-resident stockholders, it is hereby declared and understood that the stock of banking, insurance or other corporations usually termed moneyed institutions is situate at the place at which the principal office for the transacting the business of such corporation is situate; the stock of a turnpike, railroad, steamboat, canal or other improvement corporation is situate at the place where its principal office for the transaction of business shall be established, if the said office be within the limits of this State, and shall be so assessed, and if not, then the assessable property of such corporation shall be valued and assessed in the county or counties in which said property is situate, and in the city of Baltimore so far as it is situate in said city; and the stock of mining, manufacturing and other like corporations situate at the place where the works of such corporation, or the greater part of their operations, respectively, shall be conducted, shall be assessed in like manner in the county or city where such works are situate."

This provision was first enacted, in substantially the same terms as at present, by Section 16 of Chapter 23 of the Acts of the Extra Session of the General Assembly of Maryland of 1841,—six years before the charter of the New York and Baltimore Transportation Line was granted. It was re-enacted by Section 17 of Chapter 337 of the Acts of 1852, by Section 14 of Chapter 157 of the Acts of 1866, and by Section 142 of Chapter 483 of the Acts of 1874; and was codified in the Code of 1888 as Section 131 of Article 81.

The official in Maryland whose duty it is to assess shares of stock, for purposes of taxation, is now the State Tax

Commissioner. (Code 1902, Article 81, Section 151; Code 1888, Article 81, Section 132.)

Section 153 of Article 81 of the Code of 1902 (Code, 1888, Article 81, Section 133, as amended by the Acts of 1902, Chapter 417) enables the State Tax Commissioner to obtain from the several corporations the information necessary to assess the shares of stock, and, by this section, it is also made the duty of the corporation itself to pay the State Tax imposed upon its stock.

Code, 1902, Article 81, Section 159, (Code, 1888, Article 81, Section 138, as amended by Acts 1902, chap. 468), directs the officers of all corporations to annually "furnish to the County Commissioners of each county, or the Appeal Tax Court of Baltimore City, and the city clerk of each city, town or village incorporated in the State of Maryland, in which any of its stockholders may reside, a list of the said stockholders, so far as their place of residence may be known to such officer, together with the number of shares of stock held by each." This section then continues as follows:

> "And for the valuation and effectual collection of taxes assessed on the stock of banks or other incorporated institutions held by non-residents, the president or other proper officer of the corporation shall annually on or before the first day of March make out and deliver to the county commissioners of the county or appeal tax court or city clerk of the municipal corporation where said corporation is situate, an account of the number of shares of stock in such corporation held by persons not residents of this State, and the same shall be valued at its actual cash value to and in the name of such stockholders respectively; but the tax assessed on such stock shall be levied and collected from said corporation and may be charged to the account of such non-resident stockholders in the said corporation, and shall be a lien on the stocks therein held by such stockholders, respectively, until paid."

It should be said in passing, that the valuation of the shares of stock in corporations doing business in Maryland

is not made by the County Commissioners, or by the Appeal Tax Court, (to whom the lists called for by the above section are furnished), but is made by the State Tax Commissioner, as hereinafter set forth.

See—James Clark Company vs. Cumberland, 95 Md. 468.

The law just referred to and quoted was first enacted by Section 17 of Chapter 23 of the Acts of 1841,—six years before the charter of the New York and Baltimore Transportation Line was granted.

By the Act of 1843, Chapter 289, it was made the duty of the corporation to pay the taxes, and the stockholders were relieved from liability therefor. See State vs. Mayhew, 2 Gill, 487, 495. The Act of 1852, Chapter 337, Section 18, however, restored the law as it formerly stood. This last-named section was subsequently codified in the Code of 1860 as Section 97 of Article 81; was re-enacted by the Acts of 1864, Chapter 391, and by the Acts of 1874, Chapter 483, Section 87, and codified in the Code of 1888 as Section 138 of Article 81. The amendment of 1902 did nothing more than extend the provisions of the section to incorporated towns in Maryland.

Section 162 of Article 81 of the Code of 1902, (Code 1888, Article 81, Section 141, as amended by Acts 1896, chapter 120), provides that at the time of making the returns of stockholders required by Section 159, the president or other proper officer of every corporation incorporated under the laws of Maryland, or doing business therein, shall also furnish to the County Commissioners, or to the Appeal Tax Court of Baltimore City, a true statement of the real estate owned by such corporation, and situated in such county or city. Such real property is then valued and assessed to the corporation so owning the same, and the valuation is transmitted to the State Tax Commissioner. State, county and municipal taxes are required to be levied upon, and paid by,

the said corporations upon such assessments, in the same manner as taxes are levied upon and paid by individual owners of real estate.

Having provided in this way for the assessment and taxation of corporate real estate situate in Maryland, Section 162 then proceeds to provide for ascertaining the taxable value of the shares of stock as follows:

> "The respective taxable value of the shares of stock in such bank, corporation and joint stock companies shall be ascertained by the State Tax Commissioner in the manner following: He shall deduct the assessed value of such real property belonging to the said respective banks, corporations or joint stock companies from the aggregate value of all shares of such respective banks, corporations or joint stock companies and divide the remainder by the number of shares of the capital stock or shares of such respective banks, corporations or joint stock companies, and the quotient shall be the taxable value of each of such respective shares for State purposes, and all State taxes thereon shall be paid as provided now or hereafter by law, and when the valuation and assessment of the shares of the capital stock or shares of such banks, corporations or joint stock companies shall have been finally determined or made for State purposes the State Tax Commissioner shall certify to the county commissioners of each county where any of the stockholders or shareholders may reside, and to the appeal tax court of Baltimore city if any of said stockholders or shareholders reside in said city, and to the county commissioners of the county in which such bank, corporation or joint stock company is situated, or to the appeal tax court of Baltimore city if it is situated in said city, the assessed taxable value of such respective shares of stocks, or shares so ascertained as aforesaid. And the said taxable value of such respective shares of stock or shares in such banks, corporations or joint stock companies, owned by residents of this State, and taxable within this State, shall for county and municipal purposes be valued to the owner thereof in the county or city in this State in which such owners shall respectively reside,

and the said taxable value of such of said stock or shares as are held by non-residents of this State shall for county and municipal purposes be valued to the owners thereof in the county or city in which said bank, corporation or joint stock company is situated; but all county or municipal taxes assessed upon said respective taxable value of such respective shares of stock or shares shall be collected from such bank, corporation or joint stock company, and when so paid shall or may be charged by such bank, corporation or joint stock company to the account of such stockholders or shareholders, respectively."

The requirement of deducting the assessed value of the real estate from the aggregate value of the capital stock first appears in Section 5 of Chapter 266 of the Acts of 1847, and the reason of this requirement was that it had been held in The Tax Cases, 12 G. & J. 117, and in Gordon, Executor, vs. Mayor and City Council of Baltimore, 5 Gill, 231 (and later in County Commissioners vs. Farmers and Mechanics National Bank, 48 Md. 119), that to tax both the stock of the corporation and its real and personal property was double taxation, and, therefore, invalid. (The personal property of a corporation whose shares of stock are subject to taxation is expressly exempted by Code, 1902, Article 81, Section 4.)

Code, 1902, Article 81, Section 165 (Code, 1888, Article 81, Section 144), provides for an appeal to the Comptroller of the Treasury and to the State Treasurer, sitting as a Board of Review, from the valuation placed by the State Tax Commissioner upon the shares of stock. This section, first enacted by Section 152, Chapter 178, Acts 1878, reads as follows:

"As soon as the State Tax Commissioner shall have valued and assessed the shares in the several banks and other corporations in this State he shall certify and return the said valuation to the comptroller of the Treasury, who shall at once proceed to notify the president, cashier or other proper officer of such banks or other

corporations of the said valuation and assessment of their shares, respectively, by transmitting to such president or other officer an account of the State taxes due from such bank or other corporation under such valuation and assessment, by mail, under cover, fairly directed to such president or other officer, and shall note in a book the date of placing in the mail the envelope or cover containing such account. If no appeal be taken within thirty days from such transmission, the said valuation and assessment shall be final; but any such bank or corporation may, within thirty days after such notification, appeal from such valuation to the comptroller of the treasury and State Treasurer, stating in such appeal the reasons and grounds of such appeal; and said comptroller and Treasurer shall consider the same, and if the Comptroller and Treasurer shall both be of the opinion that such valuation and assessment so made by the State Tax Commissioner is erroneous and ought to be changed, they shall change the same accordingly, and the valuation and assessment so agreed upon by the Comptroller and Treasurer shall be final; but if either the Comptroller or Treasurer shall agree with the State Tax Commissioner as to the correctness of the valuation so made by him, then such appeal shall be dismissed, and the original valuation shall be and remain as the true valuation of such shares."

The finality of the valuation agreed upon by the Comptroller and the Treasurer is upheld in—

Consumer's Ice Company vs. State, 82 Md. 132.

Salisbury Association vs. Wicomico County, 86 Md. 615.

James Clark Company vs. Cumberland, 95 Md. 468.

There is one other statutory provision relating to the taxation of stock in Maryland corporations held by non-residents. Code, 1902, Article 81, Section 202 (Acts 1896, Chapter 120, Section 178; Acts 1876, Chapter 260, Section 17), among other things, provides as follows:

"All shares of stock in any national bank, corporation, association or company incorporated under the laws of this State, and belonging to any non-resident owner, and all other personal property located in this State belonging to any non-resident owner, shall be valued and assessed to the owner thereof, in the assessment district in which said bank, corporation, association or company may have its principal place of business in this State, or in which said personal property may be so located."

After the taxable value of shares of stock has been ascertained, in accordance with the aforegoing provisions, and has been included in the annual assessment basis, it only remains to formally levy the taxes upon these assessments.

The rate of the State tax is determined by the General Assembly of Maryland (Code, 1902, Article 81, Section 25; Code, 1888, Article 81, Section 22, which section is repealed and re-enacted at each session of the Legislature, and the amount of the state tax prescribed.) The State tax is then levied and imposed by the County Commissioners in the several counties, and in Baltimore city by the Mayor and City Council of Baltimore (Code, 1902, Article 81, Section 1; Code, 1888, Article 81, Section 1; Code, 1902, Article 81, Section 25; Code, 1888, Article 81, Section 22; Code, 1902, Article 81, Section 29; Code, 1888, Article 81, Section 26.)

The rate of the local tax in Baltimore city is determined in accordance with Section 40 of the Charter of Baltimore City (Code, Public Local Laws, Article 4, being Acts 1898, Chapter 123), and is levied by ordinance of the Mayor and City Council. In the several counties, the rate of the county tax is determined and the tax is imposed by the County Commissioners.

In Baltimore city, the City Collector is the official whose duty it is to collect both State and city taxes (Code, 1902, Article 81, Section 34, being Code, 1888, Article 81, Section 31, as amended by Acts 1900, Chapter 619; Charter of Baltimore City, Sections 42, 52 and 58.)

It will thus be seen that the system of corporate taxation in Maryland is as follows : Broadly speaking, (and excluding franchise taxes, gross receipt taxes, and the like), there are two taxes to which all property in Mayland is subject,—a State tax for State purposes, and a city tax for local purposes.

The real estate in Maryland of all corporations, both domestic and foreign, is assessed and taxed precisely like the real estate of individuals, and taxes thereon are due and paid by the corporation in the county or city where such real estate is situated.

The taxable value of the shares of stock of all corporations is determined in the following manner : The State Tax Commissioner each year determines the aggregate value of the shares of capital stock of each corporation ; he then deducts from this aggregate value the assessed value of the corporation's real estate, and divides the remainder by the total number of shares of stock. The quotient is the taxable value of each of such shares for State purposes.

If no appeal from the State Tax Commtssioner's valuation is taken by the corporation to the Comptroller and the Treasurer, or if, on appeal, such valuation is affirmed, then the State Tax Commissioner's valuation becomes final. If, on the other hand, an appeal is taken, and it is determined on such appeal that the valuation of the State Tax Commissioner is erroneous and ought to be changed, then the proper change is made, and this new valuation is final.

When the assessed taxable value of the shares of stock has been ascertained, it is certified by the State Tax Commisioner to the County Commissioners of each county in which any of the stockholders reside ; to the Appeal Tax Court of Baltimore City, if any of the stockholders reside in said city; and to the County Commissioners of the county in which the principal office of the corporation is situated ; or if the principal office of the corporation is situated in Baltimore city, then to the Appeal Tax Court of Baltimore City.

The said taxable value of such shares of stock as are owned by *residents* of Maryland is then valued for county or municipal purposes to the owners thereof in the county or city in which such owners respectively reside.

The situs of stock of Maryland corporations held by non-residents of the State, is declared to be at the place in Maryland where the corporation's principal office is located; and the taxable value of shares of stock held by *non-residents* of Maryland is valued for county and municipal purposes to the owners thereof in the county or city in Maryland where the principal office of the corporation is established.

The assessments having been thus determined, the several County Commissioners and the Mayor and City Council of Baltimore levy the State and local taxes, and the same are put in the hands of the proper officials for collection.

The tax on shares of stock is not paid by the stockholders themselves. The tax is collected from the corporation, and, when so paid, "shall or may be charged" by the corporation "to the account of the stockholders." In the case of *non-resident* stockholders, moreover, the tax is made "a lien on the stocks therein held by such stockholders, respectively, until paid."

PART II.

Maryland Decisions.

In order that this Court may have before it the precise grounds upon which the statutes now claimed to be unconstitutional have been upheld by the Court of Appeals of Maryland, we will now briefly review the Maryland decisions upon the point.

In The Tax Cases, 12 G. & J., 117, the Court of Appeals of Maryland, as early as 1841, held that under the law as it then stood (Acts 1841, Chapter 23, Sections 16 and 17, now Code, 1902, Article 81, Sections 150 and 153 above quoted), "non-residents of the State are liable to the tax in respect of stock held in the banks of this State, as well as residents here."

Gordon, Executor, vs. Mayor and City Council of Baltimore, 5 Gill, 231, (1847), involved an action to recover taxes paid on account of shares of stock held in a Maryland corporation by a non-resident of the State. The right of the city of Baltimore to tax the stock there in question, which was denied on grounds not necessary to go into here, was upheld by the Court. In this case, the power of the city to tax non-resident stockholders on account of their holdings in Maryland corporations does not appear to have been disputed, and, on page 236, the Court said that there could be no doubt of this right "as the situs of the stock was within the limits of the city."

In Appeal Tax Court vs. Patterson, 50 Md., 354 (affirmed in 104 U. S., 592), the Court of Appeals of Maryland held that certain bonds issued by other states and by cities outside of Maryland, and exempted from taxation in the States and cities where they were issued, were taxable in the hands of their owners residing in Maryland. The Court said that the bonds in question, being personal property, followed the person of the owner, and their situs, for purposes of taxation was, therefore, in the State where the owner resided, that is, Maryland.

The Court, however, approved the decision in The Tax Cases, 12 G. & J. 117, to the effect that non-residents of Maryland are liable to taxation in respect of stock held by them in Maryland corporations, and said that this liability rests upon the principle "that the bank being incorporated by the State, it is competent for the State to impose a tax upon its stock wherever and by whomsoever held, because the corporation is the creature of the State and exists by its permission" (Page 368).

In Appeal Tax Court vs. Gill, 50 Md. 377, it was held that stocks and bonds of other States, and of corporations created by them, were taxable in Maryland if owned by residents of Maryland, whether such securities were taxed in the States where they were issued or not.

In Mayor and City Council of Baltimore vs. Baltimore City Passenger Railway Company, 57 Md. 23, it was held to be the duty of the State Tax Commissioner to include in his return to the Appeal Tax Court of Baltimore City the shares of stock owned by non-residents of Maryland in the Baltimore City Passenger Railway Company, a corporation of Maryland, having its principal office in Baltimore City. After referring to the then existing legislation, and especially to Section 142 of Chapter 483 of the Acts of 1874 (now Code, 1902, Article 81, Section 150, above quoted), the Court, on page 36, said:

> "It is clear then that the shares of stock held by non-residents are liable to taxation, and that, for the purposes of taxation, such shares are situate in the city of Baltimore, where the appellee has its principal office."

In American Coal Company vs. County Commissioners of Alleghany County, 59 Md. 185, the Court again held that under Section 150, Article 81, Code, 1902 (then Section 142, Ch. 483, Acts 1874), "shares of stock owned by non-residents of the State are given a fixed situs by law, and are equally liable to taxation as the shares owned by residents of the State. * * * The manifest design of the law was, so far as the right of local taxation was concerned, to give to the city of Baltimore and each of the counties the full benefit of all the taxable property having either an actual or constructive situs within their respective limits." (Pages 192 to 193.)

Speaking further of the right to tax stock in Maryland corporations owned by non-residents the Court, on page 193, said:

> "The appellant is a Maryland corporation deriving its existence and all its powers and franchises from this State. And such being the case, it is settled that the sovereign power of taxation extends to every thing which exists by the authority of the State, or which is introduced with its permission, except where such

> power is expressly, or by necessary implication, excluded. The separate shares of the capital stock of the corporation are authorized to be issued by the charter derived from the State, and are subject to its control in respect to the right of taxation, and every person taking such shares, whether resident or non-resident of the State, must take them subject to such State power and jurisdiction over them. Hence the State may give the shares of stock held by individual stockholders a special or particular situs for purposes of taxation, and may provide special modes for the collection of the tax levied thereon."

The case of Bank vs. Commonwealth, 9 Wall. 353, was cited in support of the above principle.

In the American Coal Company Case, the Court of Appeals further decided that under the statute the corporation was liable to suit for the recovery of the taxes levied on its shares of stock, although the tax itself was a debt of the stockholders.

In Mayor and City Council of Baltimore vs. Hussey, 67 Md. 112, Baltimore city stock was owned by a non-resident of the State, and the City Register deducted from the interest due the annual State tax levied on the stock, and paid the same to the State officials, sending the balance to the owner. Subsequently the owner brought an action to recover the amount of interest thus deducted. The Court held that the stock was not liable to taxation in Maryland, because, being personal property, it followed the person of the owner, and was only taxable at her domicile. The Court held, however, that the taxes having been paid by the city to the State with full knowledge on the part of the stockholder, and without objection on her part, she was not entitled to recover.

This decision—at variance with both the earlier and later decisions of the Court of Appeals of Maryland, and never referred to in subsequent cases upon the same point—may be explained by the fact, which appears from the Court's opinion, that Baltimore City stock is in reality a bond, and

not stock at all, and, therefore, the distinction between stocks and bonds pointed out in Part III of this brief, in the discussion of the case of the State Tax on Foreign Held Bonds, 15 Wall. 300, applies. The true ground upon which the decision should have rested would seem to be the ground discussed hereafter in connection with 15 Wall. 300, namely, that the tax in question could not be imposed, because it operated to impair the obligation of the contract between the City of Baltimore and the holders of its stock.

In United States Electric Power and Light Company vs. State, 79 Md., 63, the Court decided that there was no double taxation in taxing the gross receipts of a corporation whose shares of stock were also taxed, because the former tax was levied upon the corporation, while the latter tax was upon the stockholders themselves. The Court, in speaking of the tax on stock, said, on page 70:

> "But the tax is not a tax upon the stock, or upon the corporation, but upon the owners of the shares of stock, though the officers of the corporation are made the agents of the State for the collection of the State tax. It is not material what assets or other property make up the value of the shares. Those shares are property, and, under existing laws, are taxable property. They belong to the stockholders respectively and individually, and when, for the sake of convenience in collecting the tax thereon, the corporation pays the State tax upon these shares into the State Treasury, it pays the tax, not upon the company's own property, nor for the company, but upon the property of each stockholder, and for each stockholder respectively, by whom the company is entitled to be reimbursed. Hence, when the owner of the shares is taxed on account of his ownership, and the tax is paid for him by the company, the tax is not levied upon or collected from the corporation at all."

See also to the same effect Firemen's Insurance Company vs. Mayor and City Council of Baltimore, 23 Md. 296; Crown Cork and Seal Company vs. State, 87 Md., 687;

Hull vs. Southern Development Company, 89 Md., 8; and Maryland Casualty Insurance Company's Case, 82 Md., 535, 563.

In Baldwin, Guardian, vs. County Commissioners of Washington County, 85 Md. 145, the Court held that stocks and bonds in non-resident corporations, held by a non-resident guardian for a non-resident ward, were liable to taxation in the county in Maryland where the guardian was appointed. This was so because statute in Maryland fixed the situs of property in the hands of a guardian in the county or city where the guardian was appointed. The Court said, on page 156:

> "It must, of course, be admitted that the situs of property of this kind for the purpose of taxation is ordinarily at the domicile of the owner, but the Legislature has the power to fix a different situs, provided, of course, there be no conflict with some provision in the Constitution."

This case was before this Court in 168 U. S., 705; before the Court of Appeals of Maryland again in 89 Md., 587; and again before this Court in 179 U. S., 220. See also Kinehart vs. Howard, 90 Md., 1; Bonaparte, Executor, vs. State, 63 Md., 465; and Mayor and City Council of Baltimore vs. Safe Deposit & Trust Company, Trustee, 97 Md., 659.

In Monticello Distilling Company vs. Mayor and City Council of Baltimore, 90 Md., 416, the Court held that the Maryland Act imposing a tax on distilled spirits was unconstitutional, so far as Baltimore city was concerned, because it failed to provide for a hearing of some kind as to the valuation of the property for taxation, and operated, therefore, to deprive the owner of his property without due process of law.

Compare Fowble vs. Kemp, 92 Md., 630, where the same law was held valid as to the counties in Maryland; and see

Carstairs vs. Cochran, 95 Md., 488, affirmed in 193 U. S., 10, where the law as amended was declared valid.

In Allen, Treasurer, vs. National State Bank, 92 Md., 509, the Court held that the Maryland statute imposing a tax upon mortgages was valid, and included non-resident mortgagees holding mortgages on land in Maryland, as well as resident mortgagees. The Court said:

> "Conceding for the present that the interest of the mortgagee is in the nature of a chose in action, the general rule that its situs for taxation is the residence of the owner is a mere fiction of law, and 'yields whenever it is necessary for the purpose of justice that the actual situs of the thing should be examined, and whenever the legislative intent is manifested that this legal fiction should not operate.'"

See also Faust vs. Building Association, 84 Md. 186.

In James Clark Distilling Company vs. Mayor and City Council of Cumberland, 95 Md. 468, the Court held, in an action to recover taxes levied on shares of stock, that notice of an increased assessment on shares of stock need not be given the individual stockholders, because the corporation represents the stockholders, and the law affords ample opportunity for the stockholders to be heard through the corporation (see pages 474 to 475).

For similiar reasons, the Court of Appeals of Maryland in the present case (96 Md. 310; Record, page 19) held that a notice to each stockholder of the assessment and valuation of his stock for taxation was unnecessary.

From a consideration of the aforegoing decisions of the Court of Appeals of Maryland it appears that the following principles have been established by that Court:

1. That shares of stock are personal property, and as such their situs for purposes of taxation ordinarily follows the person of the owner, and they are subject to taxation at his domicile. For this reason stock in non-resident corpora-

tions owned by residents of Maryland may be taxed in Maryland where the owners reside.

2. This general rule fixing the situs of stock at the domicile of the owner is a mere fiction of law, and yields whenever the legislative intent is manifested that this legal fiction shall not operate.

3. The Legislature has provided by statute that the situs of stock owned by non-residents of Maryland in Maryland corporations shall not be at the domicile of the owner (where it would be in the absence of statute), but shall be in the city or county in Maryland where the corporation has its principal office. This statute is valid, because the State's power of taxation extends to every thing which exists by the authority or with the permission of the State. The shares of stock are authorized to be issued by a charter derived from the State, and every person taking such shares, whether resident or non-resident, takes them subject to the power and jurisdiction of the State over them. For this reason the State may give the shares of stock held by non-residents a special and particular situs for purposes of taxation different from what the situs would be if no statute were passed.

4. The Maryland tax in respect of shares of stock is not a tax upon the stock, nor upon the corporation, but upon the owners of the stock. It is, however, made the duty of the corporation to pay the tax, and the corporation may then charge the same to the account of the individual stockholders.

5. Notice, or an opportunity for a hearing upon the question of the valuation of property to be assessed in Maryland, is a condition precedent to the right to assess and tax such property.

6. It is not necessary, however, to give to the individual stockholders this opportunity for a hearing, because, by the Maryland system of taxation, the corporation represents the stockholders, and notice to the corporation, for which provision is made, is, therefore, sufficient.

Before taking up the question of the validity of the Maryland law taxing non-resident stockholders on account of their stock in Maryland corporations, we would emphasize the fact that as early as 1841,—six years prior to the granting of the charter of the New York and Baltimore Transportation Line,—the stock in Maryland corporations held by non-residents of the State was taxed in Maryland just as it is today; and the right so to tax such stock was expressly upheld by the Maryland Court of Appeals. It is, therefore, no new principle of Maryland taxation which is being attacked in this cause, no innovation in our scheme of taxation which is being assailed. On the contrary, if the contention of the plaintiff in error should prevail, it will result in the overturning of a law which has been upon the statute books of Maryland for more than sixty years, during all of which time no one of the numberless corporations and individuals, who have annually paid taxes in accordance with its provisions, have ever thought it worth while to carry the question of their obligation to do so beyond the Court of last resort of Maryland.

PART III.

The State of Maryland has the power to fix the situs of shares of stock held in Maryland corporations by non-residents of the State, at the place in Maryland where the corporation has its principal office, and to provide for the taxation of such non-resident stockholders on account of their shares at such place, and no right granted or secured by the Constitution of the United States is violated thereby.

In the first place, it is of course settled that this Court will not set aside the Maryland statutes here in question, unless those statutes "encroach upon legitimate national authority or violate some right granted or secured by the Constitution of the United States."

Lake Erie Railroad Company vs. Pennsylvania, 153 U. S. 628, 641.

Kirtland vs. Hotchkiss, 100 U. S. 490, 498.

The question, therefore, and the only question, before this Court, is one of the power and authority of the State of Maryland to declare that the situs for purposes of taxation of stock in Maryland corporations held by non-residents of the State shall be in Maryland, and that such stock shall be there taxed. Moreover, if the State possesses this power, its right to exercise it is in no way affected by the fact that the non-resident stockholder may or may not be taxed upon his stock in the State of his domicile.

Blackstone vs. Miller, 188 U. S. 189, 205, and cases cited.

It is, of course, settled that the State's power of taxation is confined to persons, property and business within its own limits. Before a State can validly tax property, or persons on account of property, the property must be situated, or have its situs, within the State. The New York and Baltimore Transportation Line is a corporation of the State of Maryland, but a large number of its shares of stock, including those of the plaintiff in error, are owned by non-residents of the State. The Court of Appeals has held that the Maryland statute with reference to the taxation of shares of stock does not impose a tax upon the corporation, but upon the stockholders themselves. The first inquiry, therefore, with which we are confronted is: Where is the situs of the shares of stock in this Maryland corporation held by non-residents of the State? Is it in Maryland, where the corporation was chartered, and where it has its principal office? Or, is it in those States where the stockholders reside and have their domicile? If the situs of the stock is in Maryland, then, of course, stockholders, both resident and non-resident, are taxable in Maryland on account of it. If, on the other hand, the situs is not in Maryland, but is in the States where the stockholders reside, then such stockholders cannot be taxed in Maryland on account of their stock, because neither they nor their stock are within the jurisdiction of the State.

Of coure, there is no question but that movable personal property is always subject to taxation in the State where it is situated. Coe vs. Errol, 116 U. S. 517; American Refrigerator Transit Co. vs. Hall, 174 U. S. 70; Union Refrigerator Company vs. Lynch, 177 U. S. 149. Shares of stock, however, are personal property of an intangible nature. The general rule as to the situs of personal property is expressed in the old maxim of the common law, *mobilia sequunter personam*. This means that personal property is regarded as subject to the law of the owner's domicile. If this maxim applies to this particular stock, then the situs of the stock would, of course, be in Pennsylvania, where the owner has his domicile, and would not be within the reach of Maryland taxation.

The maxim referred to, however, is nothing more than a fiction of law, and yields whenever it is necessary for the purpose of justice that the actual situs of the property should be examined, and whenever the legislative intent is manifested that this legal fiction shall not operate.

In Maryland, the Legislature declared, as early as 1841, that the situs of stock in Maryland corporations owned by non-residents of Maryland should be at the place in Maryland where the corporation has its principal office. This enactment has ever since formed part of the statutory law of the State, and has been held valid many times by the Court of last resort in the State. There is no doubt, therefore, that the State of Maryland *intended* that the common law maxim should not apply to non-resident stockholders in Maryland corporations, but that such stockholders should be taxed upon their stock in Maryland. If, therefore, the State of Maryland had the power to do what it intended to do, namely, to fix the situs of such stock in Maryland, then the validity of the statute so fixing it must be upheld.

Whatever differences of opinion may once have existed upon this point, it is now settled that the State which has created a corporation may, for purposes of taxation, separate

the shares of stock from the person of the owner, and may tax the owner, no matter where his residence may be, to the extent of his holdings in the corporation.

Shares of stock represent money or property invested in the corporation. No matter where the stockholder may reside, his property in this stock is invested at the place where the corporation transacts its business. It is there that the stockholder's interest in the corporation is located and protected, and it is but fair that the stockholder should contribute to the expenses of the State which affords this protection.

The corporation derives its existence, and all its powers and franchises, from the State which creates it. Its shares of stock are authorized to be issued by the charter which the State has granted. They are, therefore, subject to the sovereign power and control of the State which thus brings them into being. Since this is so, the State which authorizes and creates the shares may provide that their situs for taxation shall be within the State, no matter where the holders may reside, and thereafter every person taking such shares must take them subject to the special situs thus prescribed for them, and therefore, subject to the State's power of taxation over them.

It is not necessary to look beyond the decisions of this Court in order to establish the principles which we have thus laid down.

In National Bank vs. Commonwealth, 9 Wall. 353, this Court, in speaking of the obligation there placed upon the corporation to pay the tax upon its shares of stock, said, on page 361 :

> "In the case of shareholders not residing in the State it is the only mode in which the State can reach their shares for taxation."

In Tappan, Collector, vs. Merchants' National Bank, 19 Wall. 490, this Court decided the very point here involved. The Merchants' National Bank had been incorporated under

the National Banking Act, and this Act provided that the shares of any national bank "owned by non-residents of any State shall be taxed in the city or town where said bank is located, and not elsewhere." The Illinois statute provided that the stockholders in banks should be assessed and taxed on the value of their shares of stock in the county, town or district where such bank was located, and not elsewhere, "whether such stockholder resides in such county, town or district or not." This Court held that the State of Illinois had the right to tax all stockholders in national banks doing business in Illinois on account of their shares, whether such stockholders were residents or non-residents of the State.

The decision was based upon the principle that for the purposes of taxation, the situs of shares of stock may be separated from the person of the owner, and the stockholder, even though a non-resident, may be taxed on account of his stock at the place where its situs is thus established.

This case has been approved in the recent cases of New Orleans vs. Stempel, 175 U. S. 309, 320, and Bristol vs. Washingson County, 177 U. S., 133, 144, and is, we submit, conclusive upon the question now under consideration.

In 1841—six years before the charter of the New York and Baltimore Transportation Line was granted by the State of Maryland—the law of Maryland had fixed the situs of stock owned by non-residents in Maryland corporations at the place in Maryland where the corporation had its principal office, and such stockholders were there taxable on account of their shares. All corporations thereafter created by the the State were subject to all the provisions of the then existing general laws of the State, and all stockholders took their stock subject to the requirements of these general laws and therefore subject to the condition that the situs of the stock should be in Maryland, and that they should there be taxed on account of it. When, therefore, the New York and Baltimore Transportation Line was incorporated in 1847, this provision of the General Law was as binding upon all

persons who took stock as it would have been had it been inserted in the charter itself. In taking stock, the stockholders necessarily agreed that they would submit themselves to all the conditions as to taxation and otherwise imposed by the company's charter, or by the General Law to which the holding of that charter was subject. In a word, they necessarily acquiesced in the provision of the law that the situs of their stock for taxation should be in Maryland.

It has been held that a statute giving shares of stock a situs for taxation at the location of the corporation may be passed even *after* the incorporation. St. Albans vs. National Car Company, 57 Vt. 68. All the more must this be so where, as here, the statute was in force *before* the company's charter was granted.

In Pullman's Palace Car Company vs. Pennsylvania, 141 U. S. 18, this Court, in holding that the Pullman's Palace Car Company was taxable in Pennsylvania, on account of cars used in that State, although the principal office of the company was in Illinois, said, on page 22:

> "For purposes of taxation, as has been repeatedly affirmed by this Court, personal property may be separated from its owner, and he may be taxed on its account at the place where it is, although not the place of his own domicile, and even if he is not a citizen or a resident of the State which imposes the tax."

In Adams Express Company vs. Ohio, 166 U. S. 185, 224, this Court said that the maxim *mobilia sequuntur personam* "was never of universal application and seldom interferred with the right of taxation."

In Savings & Loan Society vs. Multnomah County, 169 U. S. 421, this Court held that the Oregon statute taxing mortgages on land in Oregon to the mortgagees in the county where the land lies, was not unconstitutional because it applied to mortgages owned by non-residents of the State.

In Traveller's Insurance Company vs. Connecticut, 185 U. S. 364, the statute of Connecticut provided that the officers

of each corporation whose stock was liable to taxation should deliver annually, on the first day of October, to the Comptroller "a sworn list of all its stockholders residing without this State on said day, and the number and market value of the shares of stock therein then belonging to each, and shall on or before the twentieth day of October, annually, pay to the State one and one-half per centum of such value."

The Connecticut statute also provided that the stock of every corporation should be deemed personal property and that the corporation should have a lien upon all the stock owned by any person therein for all debts due to it from him. The statute also provided that shares of stock owned by residents of the State should be listed at their market value, and that for purposes of taxation the assessed value of the company's real estate should be deducted from the market value of such stock.

The State of Connecticut instituted action to recover certain taxes claimed to be due by the company on account of non-resident stockholders. The company contended that as the stock of the non-resident stockholders was assessed at its market value, without any deduction on account of the real estate held by the corporation, and as the stock of resident stockholders was assessed at its market value, less the proportionate value of all real estate held by the corporation upon which it already paid a tax, there was such a wrongful discrimination between the taxation of resident and non-resident stockholders as violated the Federal Constitution.

This Court, however, upheld the validity of the tax, and said that there was no wrongful discrimination. So far as appears from the Court's opinion in this case, the power of the State of Connecticut to tax non-resident stockholders on account of stock owned by them in Connecticut corporations was not disputed.

The case which has furnished the basis for practically all the attacks made upon State laws taxing non-residents on account of stock held by them in domestic corporations, is

the case of the State Tax on Foreign Held Bonds, 15 Wall. 300. In this case, this Court held that a law of Pennsylvania, passed after the issue of bonds by a railroad corporation of Ohio doing business in Pennsylvania, requiring the corporation to retain a certain tax from the interest due on the bonds of the corporation, and pay the same to the State of Pennsylvania, impaired the obligation of the contract between the company and its bondholders, and was, therefore, invalid. The Court took occasion to say in this case that the bonds in question, which were all held by non-residents of the State of Pennsylvania, were not taxable in Pennsylvania, because, being personal property of the bondholders, they followed the person of such bondholders, and were taxable at their domicile.

There are at least three grounds of distinction between this case and the one now before the Court:

1. The bonds before the Court in 15 Wall. were all issued prior to the enactment of the statute imposing the tax. On page 322, the Court said that the legality of the tax could not be questioned if it had been authorized by the charter of the company. See also Blackstone vs. Miller, 188 U. S., 189, 206, in which this Court held that when a State law imposing a tax upon transfers is in force *before* the funds come into the State, the tax cannot be said to impair the obligation of the contract.

In the present case, the tax was not, it is true, provided for in the charter of the New York and Baltimore Transportation Line, but it was provided for by the General Laws of Maryland in force at the time that charter was granted, and all persons taking the stock necessarily submitted themselves to the requirements of this law, and took their stock subject to whatever burdens that law imposed upon it.

2. The securities before the Court in 15 Wall. were bonds, and the Court held that the mortgage transferred no title, but was a mere security for the debt. Therefore, the property mortgaged belonged entirely to the company, and in

no sense to the non-resident bondholders. (Page 322.) The same cannot be said of stock. The stock represents the company's property, and its holders have more than a mere security for a debt. Each share represents a distinct interest in the corporate property itself, and confers upon its holder the right to share in the management of the corporate affairs, the right to share in surplus earnings, and, upon dissolution, to have the assets reduced to money and ratably distributed. This distinction is clearly pointed out in Matter of Bronson, 150 N. Y. 1, where bonds owned by a deceased non-resident bondholder were held not subject to taxation under the Transfer Tax Act of New York (and this under the authority of 15 Wall.); but stocks were held to be taxable. Because of this difference between stocks and bonds, whatever may be the case as to the latter, yet the former represents property in the corporation which may be given a situs for purposes of taxation in the State which granted the charter.

3. The reason why the tax before the Court in 15 Wall. was held invalid, was that to enforce it would have *impaired the obligation of the contract* between the corporation and its bondholders, by compelling the latter to accept a less amount of interest than the amount which the corporation had expressly covenanted to pay them. All that the Court said about the situs of the bonds being at the residence of the holders, and, therefore, beyond the taxing power of the State, was unnecessary to the decision of the case. If the statute in question operated to impair the obligation of the contract, then it was to that extent invalid, and its invalidity could not be affected by the fact of where the situs of the bonds was. The State could not impair the obligation of the corporation's contract with resident bondholders, any more than it could impair the obligation of the contract with bondholders who were non-residents of the State. In Savings Society vs. Multnomah County, 169 U. S. 421, this Court, on page 428, criticised the opinion in 15 Wall. as

having gone beyond what was required for the decision of the case.

Of course the tax drawn into question in the present case cannot be said to impair the obligation of any contract.

There are a few other United States authorities to which we ask the Court's attention.

In the Delaware Railroad Tax Case, 18 Wall., 206, this Court declined to decide whether, if the tax there in question had been upon stockholders, and not upon the corporation, it would have been invalid as to non-resident stockholders or not. (Page 230.) In the following year, however, as already pointed out, in Tappan vs. Merchants' National Bank, 19 Wall. 490, the Court did decide this question, and held that such non-resident stockholders were taxable.

In Murray vs. Charleston, 96 U. S. 432, the tax there in question was held invalid, because it impaired the obligation of the contract between the city of Charleston and those who took its stock. The plaintiff in that case happened to be a non-resident of the State, but the decision did not turn on this point. (See page 448.)

In Kirtland vs. Hotchkiss, 100 U. S. 491, it was held lawful for a State to tax its resident citizens on debts held by them against non-residents, secured by mortgages upon real estate in other States. This was on the principle that a debt has its situs at the residence of the creditor, and may be there taxed. In commenting on this case, this Court, in in New Orleans vs. Stempel, 175 U. S. 309, 321, said:

> "It was assumed that the situs of such intangible property as a debt evidenced by bond was at the domicile of the owner. There was no legislation attempting to set aside that ordinary rule in respect to the matter of situs."

In Erie Railroad Company vs. Pennsylvania, 153 U. S. 628, it was held that the State of Pennsylvania could not make a non-resident corporation its agent to collect taxes

imposed by it, and it was also held that the tax there in question impaired the obligation of the contract between the corporation and its bondholders.

In New Orleans vs. Stempel, 175 U. S. 309, this Court held that notes in the possession of an agent in New Orleans, who collected the interest and principal as they became due, and which notes were secured by mortgage on land in Louisiana, were taxable in Louisiana, although owned by a non-resident of the State. The Court in this case reviews a great number of authorities, and calls attention to the fact that there have been frequent recognitions by this Court of the power of the State "to separate for purposes of taxation the situs of personal property from the domicile of the owner." (Page 319.)

In Bristol vs. Washington County, 177 U. S. 133, and in State Board of Assessors vs. Comptoir National D'Escompte, 191 U. S. 388, it was also held that the evidences of debts in the hands of an agent can be taxed in the State where they are so situated, although the creditor may be a citizen of another State.

We have thus reviewed all the decisions of this Court which seem to us to throw light upon the question now under consideration, and although this review has necessarily been one of some length, we feel that it is justified by the supreme importance to the State of Maryland and to the City of Baltimore, of having this Court uphold a system of taxation which has existed for more than a half a century, and during all that time has contributed so considerable a share to the expenses of the State and Municipal Governments in Maryland; the very Governments, this Court will observe, which have guarded, protected and advanced the business interests of those non-resident stockholders who have invested their money in Maryland enterprises. It is no more than just that these non-resident stockholders should be called upon to contribute, through the means of taxation, and in proportion to their holdings in Maryland corporations, to the

support of the City and State which by their laws have helped to make those holdings valuable.

We submit that the decisions of this Court conclusively establish the right of a State to declare that the situs for taxation of shares of stock in corporations created by it shall be within its own borders, and that the holders of such stock, whether resident or non-resident, shall be there subject to taxation. The effect of this, so far as non-resident stockholders is concerned, is to separate the situs of their stock from the domicile of the owners, and to fix this situs in the State where the corporation was created.

There is another aspect in which this matter of situs may be regarded. By the statutes of Maryland, shares of stock in corporations doing business in Maryland are made subject to seizure and sale by way of execution on judgment, or in a proceeding by attachment on original process (Code, 1902, Article 23, Sections 392 to 402, and Article 9 Section 18; Code, 1888, Article 23, Sections 277 to 287, and Article 9, Section 18). These provisions apply to stock owned by non-residents of the State, as well as to stock owned by residents.

If stock in Maryland corporations owned by non-residents of the State can be given such a situs within the State as to be subject to seizure and sale on execution, then in the language of this Court, in New Orleans vs. Stempel, 175 U. S. 309, 322, "it would seem to follow that the State has power to establish a like situs within the State for purposes of taxation."

The various State decisions upholding the validity of statutes similar to the one now under consideration are collected in Cook on Corporations, Vol. 2, Section 566, and notes; but, in view of the repeated adjudications of this Court upon the point, we do not think it necessary to cite these decisions in detail. We, therefore, submit that the power of the State of Maryland to tax non-resident stockholders on account of stock held by them in Maryland

corporations is unqestioned, and we pass to a consideration of the second point relied upon by the plaintiff in error as an objection to the constitutionality of the Maryland statute.

PART IV.

Although the laws of Maryland make no provision for notice to the individual stockholders of a Maryland corporation, or for any opportunity to be heard by them, upon the question of the valuation of their stock for purposes of taxation, yet ample provision is made for notice to, and an opportunity to be heard by, the corporation itself, and inasmuch as the corporation, under the Maryland system of taxation, acts for and as the representative of the stockholders, the Maryland statute gratifies the requirement of due process of law.

There have been so many decisions, particularly in recent years, in which the Court has construed the phrase "due process of law," that there can no longer be any doubt as to its meaning, and no good purpose could be subserved by reviewing these decisions in detail.

An examination of them discloses that this Court has never yet attempted to accurately define the meaning of "due process of law," preferring to leave the intent of the words to be ascertained by the gradual process of judicial inclusion and exclusion. Regard must always be had to the cause and object for which the property is taken, whether under the taxing power, the power of eminent domain, or the power of assessment for local improvements. With reference to the last two instances, notice to the owner at some stage of the proceedings, as well as an opportunity to defend, is essential. "But laws for the assessment and collection of general taxes stand upon a somewhat different footing, and are construed with the utmost liberality, sometimes even to the extent of holding that no notice whatever is necessary." (Turpin vs. Lemon, 187 U. S. 51, 58.)

So far as the assessment of property for general taxation is concerned, due process of law, speaking generally, requires that at some stage in the proceedings notice and an opportunity for a hearing be given to the owner of the property with reference to the amount of his assessment. But as to the mode, manner and character of this notice, each case must be controlled by its own circumstances. The most that can be said, is that the assessment proceedings must be in conformity with natural justice, and that the notice must be such as is appropriate and suitable to the nature of the case. If the kind of notice which the State statute prescribes meets this standard, then the requirement of due process of law is gratified. The statute, moreover, will be construed with the utmost liberality, "and it is only when the proceedings are arbitrary, oppressive and unjust, that they are declared to be not due process of law." (See Glidden vs. Harrington, 189 U. S. 255, 258, where the earlier authorities are collected.)

In the light of what has just been said, we will now consider the contention of the plaintiff in error, that the Maryland statute violates the requirement of due process of law, because it contains no provision for giving notice, or an oppurtunity to be heard, to the individual stockholders, upon the question of the valuation to be placed upon their stock.

This contention, if well taken, applies to resident stockholders no less than to non-resident stockholders, so that if the law is open to this objection with respect to the assessment of shares of stock owned by non-residents of the State, it is open to the same objection with respect to shares of stock owned by residents of the State, and it would follow that the entire system for taxing shares of stock which has existed in Maryland for over a half a century would fall to the ground. This Court will not contribute to an effect so far reaching as this, unless compelled to do so by the plain requirements of law.

It is true that the Maryland statutes do not contemplate giving any notice or opportunity for hearing to the indi-

vidual stockholders. Ample provision, however, is made for notice and a hearing to the corporation itself. The law requires the list of stockholders to be in the hands of the State Tax Commissioner by March 15, in each year (Code, 1902, Article, 81, Section 153); the State Tax Commissioner must make his assessments by May 15, in each year (Section 153); and as soon as he has done this, he is required to certify his valuation to the Comptroller of the Treasury (Section 165.) It is then made the duty of the Comptroller to at once notify the corporation of the assessment, and the corporation is given the right to appeal, within thirty days, to the Comptroller and the State Treasurer, and have a hearing before those officials.

The statute, therefore, prescribes the time when the assessment must be made, the time when the notices must be given, and the time within which the appeal must be taken. The place where the appeal will be heard is also fixed, because "official proceedings are always, in the absence of express provision to the contrary, to be had at the office of the officer charged with the duties." Merchants' and Manufacturers' Bank vs. Pennsylvania, 167 U. S. 461, 466. It is, therefore, beyond question that the Maryland statute contains ample provision for giving notice and an opportunity to be heard to the corporation, and if this is sufficient to warrant the assessment of the stockholders on account of their stock, then the requirement of due process of law is gratified.

A glance at the Maryland system for taxing shares of stock shows that, from the very beginning of the proceedings to the very end, the corporation acts for and is the representative of its stockholders. The *corporation* is required to furnish the State Tax Commissioner with a statement of the number of shares of stock, "with such information in regard to the value of the same as may be required by the said Commissioner." (Code, 1902, Article 81, Section 153.) The State Tax Commissioner is authorized to examine the *officers of the corporation* in order to ascertain the value of the stock.

(Section 151.) The *corporation* is required to furnish the several county commissioners and the Appeal Tax Court with the list of both resident and non-resident stockholders. (Section 159.) The *corporation* is given a hearing with respect to the assessment placed upon its stock. (Section 165.) The *corporation* is required to pay the taxes (Sections 159 and 162), and although the taxes may be charged to the account of the individual stockholders, yet they must be paid by the corporation whether dividends have been declared or not. (American Casualty Insurance Company Case, 82 Md. 535.)

The reason why the corporation, and not the stockholder, is made the factor in all these matters, is not only because the corporation is within ready access of the authorities, while the stockholders are scattered throughout the State and the country, but also because the corporation alone is in a position to furnish the information necessary for the proper assessment of its stock. If the opportunity for a hearing were given the individual stockholders, they could only avail themselves of it by calling upon the corporation for data which it possesses, and which they do not possess. But by giving notice to the corporation, the law enables that body to have a hearing which is not only the most vitally interested, because of its primary obligation to pay the taxes, whether dividends are owing or not, but which is also the very body best able to present all the facts and circumstances bearing upon the proper valuation to be placed upon its stock.

In Clark Distilling Company vs. Cumberland, 95 Md. 468, Chief Justice McSherry, on page 474, set forth the reasons why notice to the corporation was sufficient.

> "A notice to each shareholder is unnecessary, because the corporation represents the shareholders. The officers of the corporation are required by the Code to make an annual return to the State Tax Commissioner, and upon the information disclosed by that return the valuation of the capital stock is placed each year. If

> the valuation is not satisfactory an appeal may be taken by the corporation for the shareholders. An opportunity is thus afforded for the shareholders to be heard through the corporation, and that gratifies all the requirements of law. If each and every shareholder in the great number of companies throughout the State had a right to insist upon a notice before an assessment of his shares could be made, and if each were given a separate right of appeal, it would be simply impossible to fix annually a valuation on shares of capital. The policy of the law is to treat the corporation not merely as tax collector after the tax has been levied, but to deal with it as the representative of the shareholders in respect to the assessment of the shares; and when notice has been given to the corporation and it has the right to be heard on appeal, notice is thereby given to the shareholders and thy are accorded a hearing."

In view of the aforegoing considerations, we submit, that where, as in Maryland, the law provides for giving notice and a hearing to the corporation itself, and where, as in Maryland, the corporation is the active representative of the stockholder at every step in the assessment and taxation of his shares of stock, a notice to the corporation is a notice to the stockholder, and is in fact the kind of notice which is appropriate and suitable to the nature of the case, and is in conformity with natural justice. The assessment of stock in pursuance of such a notice is in no sense "arbitrary, oppresive and unjust" to stockholders. This being so, the requirement of due process of law is gratified.

PART V.

If the State of Maryland can constitutionally tax non-residents on account of their stock in Maryland corporations (as we submit it can), then equity will not enjoin the collection of the taxes merely because the law fails to provide for notice or a hearing.

That the Maryland statute, in providing for notice to the corporation, complies with the requirement of due process

of law, seems to us so clear that we will dwell but briefly upon the jurisdiction of equity to grant an injunction in this cause. Indeed, we can well afford to be brief upon this last point, because, assuming that the State of Maryland has the power to tax non-resident stockholders in Maryland corporations, it has been very recently decided, in the case of People's National Bank vs. Marye, 191 U. S. 272, that equity will not enjoin the collection of such a tax upon the sole ground that the statute authorizing it contained no provision for notice or a hearing.

In the Marye Case, the Court decided that where it was conceded that some part of the taxes levied on shares of stock was due, equity would not enjoin the collection of the taxes, unless the amount conceded to be due was first paid or tendered. To this the answer was made that the whole tax was void, because the statute did not provide for notice to the stockholder before determining the value of his shares. This is the exact contention of the plaintiff in error in the present case.

This Court, however, held that where "there is a statute which provides for an assessment and gives jurisdiction to the taxing officer, under some circumstances, to make one, but the particular assessment is invalid for want of a notice to the tax-payer, or some other kindred objection, the equitable duty still rests upon him to pay what would be his fair proportion of the tax as compared with that laid upon other property before he can ask the aid of the Chancellor to enjoin the collection of the balance. This is the equitable rule, and it is good morals as well." (Page 281.)

The Court further said that the stockholder owed *something* to the Government, as a tax upon his shares, and that this equitable obligation to pay some tax, the conceded amount of which was perfectly clear under the law, was not obliterated because the tax could not, by reason of some failure in matter of detail, be collected, and might be called void. (Pages 282-3.)

In the present case, there exists a valid Maryland statute clearly providing for the assessment and taxation of non-resident stockholders on account of their stock. If this statute is not enforceable, it can only be because it fails to provide for a notice to the stockholder. But, however this may be, the statute places the stockholders under the equitable obligation of paying the taxes which it was thus clearly intended they should pay. The tax, even if uncollectible, is still equitably and justly due. A Court of Equity will not lend its aid to stockholders attempting to escape payment of taxes which the State intended to impose and had the right to impose, merely because "some part of the law may be unconstitutional because of a failure to comply with some matter of detail." (Marye's Case, page 282.)

For the reasons already given, we, therefore, submit that the Maryland statute here in question violates no provision of the Federal Constitution, or of the Fourteenth Amendment, and that the judgment of the Court of Appeals of Maryland should, therefore, be affirmed.

Respectfully submitted,

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Supreme Court of the United States.

No. 86.—October Term, 1904.

James C. Corry, Plaintiff in Error, vs. The Mayor and Council of Baltimore et al. } In error to the Court of Appeals of the State of Maryland.

[February 20, 1905.]

The New York and Baltimore Transportation Line was chartered in 1847 by the general assembly of Maryland, and it still exists by virtue of an extension in 1876 of its charter. At all times the corporation has maintained its principal office in the city of Baltimore.

James C. Corry, a resident and citizen of Pennsylvania, acquired one hundred and fifty shares of the stock of the transportation line, having a face value of twenty dollars per share.

The one hundred and fifty shares standing in Corry's name, as stated, were assessed for the years 1899 and 1900 for State and the municipal taxes of the city of Baltimore, the total taxes being $43.27 for the year 1899 and $36.49 for the year 1900. Conformably to the laws of Maryland, payment of said taxes was demanded of the transportation company. To restrain compliance with this demand Corry commenced the present suit, making defendants to the bill of complaint the mayor and council of Baltimore, the treasurer of the city, the treasurer of the State, and the transportation company. The relief prayed was based on averments that the laws of Maryland under which the taxes were levied were repugnant to the State and Federal Constitutions, upon grounds specified in the bill. A decree was entered sustaining general demurrers, interposed by the various defendants, and dismissing the bill. This was affirmed by the Court of Appeals of Maryland. (96 Md. 310.)

Mr. Justice White, after making the foregoing statement, delivered the opinion of the Court.

The subjects and methods of taxation of property within the State of Maryland are regulated generally by article 81 of the Code of Public General Laws of that State.

A tax for State purposes and one for local purposes is laid upon all property. In each year the officers of domestic corporations are required to furnish information respecting the value of the shares of stock in such corporations to the State tax commissioner, who determines the aggregate

value thereof, deducts therefrom the assessed value of the real estate owned by the corporation, and the quotient, obtained by dividing the remainder by the total number of shares of stock, is treated as the taxable value of each share, subject, however, to correction on appeal to the State comptroller and State treasurer after notice to the corporation of the valuation fixed by the tax commissioner. The rate of the State tax is determined by the general assembly, and that for municipal purposes in Baltimore is fixed by the mayor and council of that city. The levy on property in Baltimore, both for State and city purposes, is made by the municipal authorities. In case of stock in Maryland corporations owned by non-residents the statutes declare that the situs of such stock, for the purpose of taxation, shall be at the principal office of the corporation in Maryland, and such shares are there assessed at their value to the owners. The statutes undoubtedly impose upon a Maryland corporation the duty of paying for and on account of the owners the taxes assessed in respect of the shares, and compel such payment without reference to the dividends, giving to the corporation a lien upon the shares of stock, and entitling the corporation, when it pays the taxes, to proceed by a personal action to recover the amount paid. (*Dugan* v. *Mayor of Baltimore*, 1 G. & J. 499, 502; *Mayor &c.* v. *Howard*, 6 H. & J. 383, 394; *American Coal Co.* v. *Allegany Co. Comrs.*, 59 Md. 197; *Hull* v. *Southern Development Co.*, 89 Md. 8, 11.)

The Maryland decisions have also settled that the tax is on the stockholder personally because of his ownership of the stock, and is not on the stock *in rem* or on the corporation. The Maryland doctrine on the subject is shown by the opinion of the Court of Appeals of Maryland in *United States Electric Power & Lighting Company* v. *State*, (79 Md. 63,) where the court said (p. 70):

"But the tax is not a tax upon the stock, or upon the corporation, but upon the owners of the shares of stock, though the officers of the corporation are made the agents of the State for the collection of the State tax. It is not material what assets or other property make up the value of the shares. Those shares are property, and, under existing laws, are taxable property. They belong to the stockholders respectively and individually, and when, for the sake of convenience in collecting the tax thereon, the corporation pays the State tax upon these shares into the State treasury, it pays the tax, not upon the company's own property, nor for the company, but upon the property of each stockholder, and for each stockholder respectively, by whom the company is entitled to be reimbursed. Hence, when the owner of the shares is taxed on account of his ownership, and the tax is paid for him by the company, the tax is not levied upon or collected from the corporation at all."

See, also, *Hull* v. *Southern Development Co.*, *supra*.

Substantially similar laws for the taxing of stock in Maryland corporations were in force in Maryland at the time of the incorporation of the transportation company, and have been in force ever since.

All the claims of Federal right here asserted are embraced in and will be disposed of by passing on two propositions, which we shall consider separately.

The first proposition is that, as the authority of the State of Maryland to tax is limited by the effect of the Fourteenth Amendment to the Constitution of the United States to persons and property within the jurisdiction of the State, and as the tax in question was not *in rem* against the stock but was *in personam* against the owner, the power attempted to be exercised as it imposed a personal liability was wanting in due process of law.

The Court of Appeals of Maryland disposed of this contention by deciding that it was in the power of the State of Maryland to fix for the purposes of taxation the situs of stock in domestic corporations held by a non-resident. It also held that, as such corporations were created by the State and were subject to its regulating authority, it was within its power to impose, as a condition to the right to acquire stock in such corporations, the duty of paying the taxes assessed on the stock, and, morever, that the State might compel the corporation to pay such taxes on behalf of the stockholder, and confer upon the corporation a right of action to obtain reimbursement from a stockholder when the payment was made. The court, in its opinion in this case, did not expressly elaborate the foregoing considerations, but contented itself by referring to previous decisions by it made. Among the cases so referred to was the case of *Coal Company* v. *County Commissioners of Allegany County*, (59 Md. 185, 193,) where it was said:

"The appellant is a Maryland corporation, deriving its existence and all its powers and franchises from this State. And such being the case, it is settled that the sovereign power of taxation extends to everything which exists by the authority of the State, or which is introduced with its permission, except where such power is expressly, or by necessary implication, excluded. The separate shares of the capital stock of the corporation are authorized to be issued by the charter derived from the State, and are subject to its control in respect to the right of taxation, and every person taking such shares, whether resident or non-resident of the State, must take them subject to such State power and jurisdiction over them. Hence the State may give the shares of stock held by individual stockholders a special or particular situs for purposes of taxation, and may provide special modes for the collection of the tax levied thereon."

That it was rightly determined that it was within the power of the State to fix, for the purposes of taxation, the situs of stock in a domestic corporation, whether held by residents or non-residents, is so conclusively settled by the prior adjudications of this court that the subject is not open for discussion. Indeed, it was conceded in the argument at bar that no question was made on this subject. The whole contention is that, albeit the situs of the stock was in the State of Maryland for the

purposes of taxation, it was nevertheless beyond the power of the State to personally tax the non-resident owner for and on account of the ownership of the stock, and to compel the corporation to pay and confer upon it the right to proceed by a personal action against the stockholder in case the corporation did pay. Reiterated in various forms of expression, the argument is this, that as the situs of the stock within the State was the sole source of the jurisdiction of the State to tax, the taxation must be confined to an assessment *in rem* against the stock, with a remedy for enforcement confined to the sale of the thing taxed, and hence without the right to compel the corporation to pay or to give it, when it did pay, a personal action against the owner.

But these contentions are also in effect long since foreclosed by decisions of this court. (*Bank* v. *Commonwealth*, 9 Wall. 353; *Tappan* v. *Merchants' National Bonk*, 19 Wall. 490.) In *Bank* v. *Commonwealth*, (pp. 361, 362,) it was said:

"If the State cannot require of the bank to pay the tax on the shares of its stock it must be because the Constitution of the United States, or some act of Congress, forbids it.

* * * * * *

"If the State of Kentucky had a claim against a stockholder of the bank who was a non-resident of the State, it could undoubtedly collect the claim by legal proceeding, in which the bank could be attached or garnisheed, and made to pay the debt out of the means of its shareholders under its control. This is, in effect, what the law of Kentucky does in regard to the tax of the State on the bank shares."

And it was further observed (p. 363):

"The mode under consideration is the one which Congress itself has adopted in collecting its tax on dividends, and on the income arising from bonds of corporations. It is the only mode which, certainly and without loss, secures the payment of the tax on all the shares, resident or non-resident; and, as we have already stated, it is the mode which experience has justified in the New England States as the most convenient and proper, in regard to the numerous wealthy corporations of those States."

But it is insisted that these rulings concerned taxation by the States of the shares of stock in national banks under the provisions of the national banking act, and are therefore not applicable. The contention is thus expressed:

"This act forms a part of the charter of the national banks and provides for this liability. Charters can and frequently do undoubtedly provide for a personal liability of stockholders in various forms; the liability to creditors of the corporation is one of the common illustrations, and the liability may be thus imposed for a tax as well as for any other debt or obligation. The court therefore held [in the Tappan case, page 500] that under the national banking act the shareholders were liable, because that act 'made it the law of the property.' The liability arose, not out of the taxing power of the sovereign, but from the subscription or charter contract of the subject."

In substance, the contention is that the conceded principle has no application to taxation by a State of shares of stock in a corporation created by it, because by the Constitution of the United States the States are limited as to taxation to persons and things within their jurisdiction, and may not, therefore, impose upon a non-resident, by reason of his property within the State, a personal obligation to pay a tax. By the operation, therefore, of the Constitution of the United States it is argued the States are restrained from affixing, as a condition to the ownership of stock in their domestic corporations by non-residents, a personal liability for taxes upon such stock, since the right of the non-resident to own property in the respective States is protected by the Constitution of the United States, and may not be impaired by subjecting such ownership to a personal liability for taxation. But the contention takes for granted the very issue involved. The principle upheld by the rulings of this court to which we have referred, concerning the taxation by the States of stock in national banks, is that the sovereignty which creates a corporation has the incidental right to impose reasonable regulations concerning the ownership of stock therein, and that a regulation establishing the situs of stock for the purpose of taxation, and compelling the corporation to pay the tax on behalf of the shareholder, is not unreasonable regulation. Applying this principle, it follows that a regulation of that character, prescribed by a State, in creating a corporation is not an exercise of the taxing power of the State over persons and things not subject to its jurisdiction. And we think, moreover, that the authority so possessed by the State carries with it the power to endow the corporation with a right of recovery against the stockholder for the tax which it may have paid on his behalf. Certainly, the exercise of such a power is no broader than the well-recognized right of a State to affix to the holding of stock in a domestic corporation a liability on a non-resident as well as a resident stockholder *in personam*, in favor of the ordinary creditors of the corporation. (*Flash* v. *Conn*, 109 U. S. 371; *Whitman* v. *National Bank*, 176 Ib. 559; *Nashua Savings Bank* v. *Anglo-American L. M. A. Co.*, 189 U. S. 221, 230, and cases cited; *Platt* v. *Wilmot*, 193 U. S. 602, 612.)

Whilst it is true that the liability of the non-resident stockholder in the case before us, as enforced by the laws of Maryland, was not directly expressed in the charter of the corporation, it nevertheless existed in the general laws of the State at the time the corporation was created, and, be this as it may, certainly existed at the time of the extension of the charter. This is particularly the case, since the Constitution of Maryland, for many years prior to the extension of the charter of the transportation company, contained the reserved right to alter, amend and repeal. From all the foregoing it resulted that the provisions of the general laws and of the Constitution of Maryland were as much a part of the charter as if expressly

embodied therein. Nor can this conclusion be escaped by the contention that, as the provisions of the statute imposing on non-resident stockholders in domestic corporations a liability for taxes on their stock violated the Constitution of the United States, therefore such unconstitutional requirements cannot be treated as having been incorporated in the charter, for this argument amounts only to reasserting the erroneous proposition which we have already passed upon.

Having disposed of the first proposition we come to consider the second, which is that the legislation of the State of Maryland is repugnant to the Constitution of the United States, because of the omission to directly require the giving of notice to the non-resident stockholder of assessments on his stock and opportunity for contest by him as to the correctness of the valuation fixed by the taxing officers. The highest court of the State of Maryland has construed the statutory provisions in question as in legal effect constituting the corporation the agent of the stockholders to receive notice and to represent them in proceedings for the correction of an assessment. Thus in *Clark Distilling Co.* v. *Cumberland*, (95 Md. 468,) the court said (p. 475):

"A notice to each shareholder is unnecessary, because the corporation represents the shareholder. The officers of the corporation are required by the code to make an annual return to the State tax commissioner, and upon the information disclosed by that return the valuation of the capital stock is placed each year. If the valuation is not satisfactory, an appeal may be taken by the corporation for the shareholders. An opportunity is thus afforded for the shareholders to be heard through the corporation, and that gratifies all the requirements of law. If each and every shareholder in the great number of companies throughout the State had a right to insist upon a notice before an assessment of his shares could be made, and if each were given a separate right of appeal, it would be simply impossible to fix annually a valuation on shares of capital. The policy of the law is to treat the corporation not merely as tax collector after the tax has been levied, but to deal with it as the representative of the shareholders in respect to the assessment of the shares, and when notice has been given to the corporation, and it has the right to be heard on appeal, notice is thereby given to the shareholders, and they are accorded a hearing. This is so in every instance where the assessment is made by the State tax commissioner, because the revenue laws throughout treat the corporation as the representative of the shareholders, and as no official other than the tax commissioner has power to assess capital stock, no notice other than the one given by him is necessary; and, as no notice other than the one given by him is necessary, a notice by the municipality to each shareholder is not requisite."

If a tax was expressly imposed upon the corporation the stockholders, though interested in the preservation of the assets of the corporation, could not be heard to object that the statute did not provide for notice to them of the making of the assessment. The condition attached by the Maryland law to the acquisition of stock in its domestic corporations, that the

stockholders, for the purpose of notice of the assessment of the stock and proceedings for the correction of the valuation thereof, shall be represented by the corporation, is not in our opinion an arbitrary and unreasonable one, when it is borne in mind that the corporation, through its officers, is by the voluntary act of the stockholders constituted their agent and vested with the control and management of all the corporate property, that which gives value to the shares of stock and in respect to which taxes are but mere incidents in the conduct of the business of the corporation. The possibility that the State taxing officials may abuse their power and fix an arbitrary and unjust valuation of the shares, and that the officers of the corporation may be recreant in the performance of the duty to contest such assessments, does not militate against the existence of the power to require the numerous stockholders of a corporation chartered by the State, particularly those resident without the State, to be represented in proceedings before the taxing officials through the agency of the corporation.

As we conclude that the legislation of the State of Maryland in question does not contravene the due process clause of the Fourteenth Amendment to the Constitution of the United States, the judgment of the Court of Appeals of Maryland is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.